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No. 05-0511

IN THE

Supreme Court of the United States

ROBERT SASSON,

Petitioner,

v.

NORMAN F. SOKOLOFF, M.D., individually and as Trustee for CAMELOT MEDICAL GROUP, INC., PROFIT SHARING PLAN,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The bankruptcy jurisdiction statute, 28 U.S.C. § 1334(b), grants district courts jurisdiction over "civil proceedings arising under title 11, or arising in or related to cases under title 11." 28 U.S.C. § 157(a) in turn provides that district courts may refer such proceedings to "the bankruptcy judges for the district."

The general federal supplemental jurisdiction statute, 28 U.S.C. § 1367(a), grants district courts jurisdiction, "in any civil action of which the district courts have original jurisdiction," over "claims that are so related to claims in the action . . . that they form part of the same case or controversy under Article III of the United States Constitution."

The question presented, which has divided the courts of appeals, is whether bankruptcy courts may exercise the general supplemental jurisdiction provided in section 1367(a) to hear claims that fall outside section 1334(b)'s more restrictive grant of jurisdiction over matters "related to" the bankruptcy case.

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

Petitioner Robert Sasson respectfully petitions this Court to issue a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINIONS AND JUDGMENT BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit, affirming the judgment of the Bankruptcy Appellate Panel, is reported at 424 F.3d 864 (9th Cir. 2005) and is reproduced at App. 1a–18a. The order of the Court of Appeals denying rehearing and rehearing *en banc* is not reported and is reproduced at App. 19a. The opinion of the Ninth Circuit Bankruptcy Appellate Panel, affirming the judgment of the bankruptcy court, is unreported and is reproduced at App. 21a–42a. The order of the United States Bankruptcy Court for the Northern District of California is

unreported and is reproduced at App. 53a-54a. The hearing in which the bankruptcy court indicated it would deny petitioner's motion to vacate is reproduced at App. 43a–51a.

JURISDICTION

The opinion of the court of appeals was issued on August 25, 2005, and subsequently amended on September 13, 2005. Petitioner filed a timely petition for rehearing or rehearing *en banc* on September 8, 2005, which the court of appeals denied on November 10, 2005. By order dated January 27, 2006, Justice O'Connor granted petitioner's application (05-A-686) to extend the time to file this petition for certiorari through and including March 10, 2006. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Section 523(a)(6) of title 11, United States Code (the "Bankruptcy Code") provides: "A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt— . . . . (6) for willful and malicious injury by the debtor to another entity or to the property of another entity."

Section 157(a) of title 28, United States Code provides: "Each district court may provide that any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11 shall be referred to the bankruptcy judges for the district."

Section 1334(b) of title 28, United States Code provides: "Except as provided in subsection (e)(2), and notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to a case under title 11."

Section 1367(a) of title 28, United States Code provides: "Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over

all other claims that are so related to the claims in the action within such original jurisdiction that they form a part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties."

INTRODUCTION

This case presents a basic question of bankruptcy jurisdiction that has long divided the courts of appeals: whether the bankruptcy jurisdiction statute's specific grant of jurisdiction over matters "related to" a bankruptcy case precludes bankruptcy courts from invoking the broader grant of supplemental jurisdiction provided by the general federal supplemental jurisdiction statute.

Section 1334(b) of title 28, which governs bankruptcy jurisdiction, grants district courts jurisdiction over "civil proceedings arising under title 11, or arising in or related to cases under title 11." This Court has made clear that a case is within the "related to" jurisdiction of section 1334 only if the outcome of the proceeding might have an effect on the bankruptcy estate. *See Celotex Corp.* v. *Edwards*, 514 U.S. 300, 308 & n.6 (1995) (citing *Pacor, Inc.* v. *Higgins*, 743 F.2d 984, 994 (3d Cir. 1984)). Section 157(a), in turn, provides that district courts may refer all proceedings that fall within the district court's section 1334(b) jurisdictional grant to "the bankruptcy judges for the district." 28 U.S.C. § 157(a).

Section 1367(a) of title 28 grants the district courts "supplemental jurisdiction," previously described as "pendent" or "ancillary" jurisdiction. "[I]n any civil action of which the district courts have original jurisdiction," section 1367 grants the district courts jurisdiction over "claims that are so related to claims in the action within [the] original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution." This Court has explained that this "supplemental jurisdiction" extends to the limit of the Article III power, permitting district courts to hear any claim that "arise[s] out of the same common nucleus of operative facts" as a claim over

which there is another source of federal jurisdiction. *See Jinks* v. *Richland County, S.C.*, 538 U.S. 456, 463 (2003); *Raygor* v. *Regents of the Univ. of Minn.*, 534 U.S. 533, 539 (2002); *Finley* v. *United States*, 490 U.S. 545, 549 (1989); *United Mine Workers of Am.* v. *Gibbs*, 383 U.S. 715, 725 (1966).

The intersection of these two statutes has given rise to the question whether a bankruptcy court may exercise jurisdiction over a claim that cannot have any effect on the bankruptcy estate (such that it is excluded from section 1334(b)'s grant of jurisdiction over matters "related to" the bankruptcy case), but that arises out of the same common nucleus of operative facts as another claim that is within section 1334(b)'s bankruptcy jurisdiction (such that it is "related to" a bankruptcy claim within the meaning of section 1367(a)). Put another way, does the specific grant of "related to" jurisdiction in section 1334(b) preclude the invocation of the general section 1367(a) supplemental jurisdiction over "related" claims where "original" federal jurisdiction is grounded in bankruptcy? This question has sharply divided the federal courts of appeals.

The Ninth Circuit below, following circuit precedent, took the broad view of bankruptcy jurisdiction and held that bankruptcy courts may exercise supplemental jurisdiction under section 1367. The bankruptcy courts, the Ninth Circuit reasoned, have jurisdiction over all state-law claims that are "so related to claims in the [bankruptcy proceeding] . . . that they form part of the same case or controversy." Pet. App. 6a (quoting *Montana* v. *Goldin* (*In re Pegasus Gold Corp.*), 394 F.3d 1189, 1195 (9th Cir. 2005)). More specifically, the Ninth Circuit held in the decision below that "the bankruptcy court's 'related to' jurisdiction also includes the district court's supplemental jurisdiction pursuant to 28 U.S.C. § 1367." *Id.*

The Second Circuit follows the same rule. *See Klein* v. *Civale & Trovato, Inc.* (*In re Lionel Corp.*), 29 F.3d 88, 92 (2d Cir. 1994) ("The bankruptcy court had jurisdiction over the Owners' claims against CTI under principles of supplemental jurisdiction. *See* 28 U.S.C. § 1367.").

By contrast, the Third, Fifth, Seventh and Eleventh Circuits have held that bankruptcy courts may not exercise supplemental jurisdiction. As the Fifth Circuit has explained: "Congress has gone to great lengths to determine what proceedings may be tried by bankruptcy courts, and the exercise of ancillary and pendent jurisdiction could subsume the more restrictive 'relate[d] to' and 'arising in' jurisdiction, such that the latter would be rendered substantially, if not entirely, superfluous." *Walker* v. *Cadle Co.* (*In re Walker*), 51 F.3d 562, 573 (5th Cir. 1995) (internal quotation omitted).[1]

Leading commentators have, for more than a decade, pointed to this division of authority in the lower federal courts. *See* E. Scott Fruehwald, *The Related To Subject Matter Jurisdiction of Bankruptcy Courts*, 44 Drake L. Rev. 1, 27-28 (1995) ("courts are split over whether statutory supplemental jurisdiction applies to bankruptcy courts"); Susan Block-Lieb, *The Case Against Supplemental Jurisdiction:*

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[1] *See also Bass* v. *Denney (In re Bass)*, 171 F.3d 1016, 1024 (5th Cir. 1999) (relying on *Walker* for the proposition that "bankruptcy courts may not exercise supplemental jurisdiction"); *Bobroff* v. *Continental Bank (In re Bobroff)*, 766 F.2d 797, 802 (3d Cir. 1985) ("[T]he mere fact that there may be common issues of fact between a civil proceeding and a controversy involving the bankruptcy estate does not bring the matter within the scope of [the present section 1334(b)]. Judicial economy itself does not justify federal jurisdiction." (quotations omitted)); *Torkelsen* v. *Maggio* (*In re Guild & Gallery Plus, Inc.*), 72 F.3d 1171, 1181 (3d Cir. 1996) (citing *Bobroff* as "rejecting argument that 'related to' jurisdiction is intended to mirror the principle of pendent jurisdiction"); *Wisconsin Dep't of Indus., Labor & Human Relations* v. *Marine Bank Monroe* (*In re Kubly*), 818 F.2d 643, 645 (7th Cir. 1987) (rejecting the proposition that it is sufficient for there to be "a logical relationship or 'nexus' between a proceeding and a bankruptcy case" because "the 'related to' jurisdiction encompasses only disputes that affect the payments to the bankrupt's other creditors or the administration of the bankrupt's estate"); *Miller* v. *Kemira* (*In re Lemco Gypsum, Inc.*), 910 F.2d 784, 789 (11th Cir. 1990) ("Overlap between the bankrupt's affairs and another dispute is insufficient unless its resolution also affects the bankrupt's estate or the allocation of assets among creditors. The mere fact that there may be common issues of fact between a civil proceeding and a controversy involving the bankruptcy estate does not bring the matter within the scope of § 1334(b). Judicial economy itself does not justify federal jurisdiction." (footnotes omitted)).

A Constitutional, Statutory and Policy Analysis, 62 Fordham L. Rev. 721, 756 (1994) ("the majority of courts that have addressed the issue have concluded that . . . bankruptcy courts are empowered to exercise supplemental bankruptcy jurisdiction"); Ralph Brubaker, *On the Nature of Federal Bankruptcy Jurisdiction: A General Statutory and Constitutional Theory*, 41 Wm. & Mary L. Rev. 743, 928 (2000) ("many courts have concluded more recently that bankruptcy courts have no 'supplemental' bankruptcy jurisdiction whatsoever"); *see also* William L. Norton, Jr., 1 *Norton Bankr. Law & Practice* 2d § 4:70 (2005) (noting both that "it has been held that § 1367(a) may be invoked as a basis for the exercise of jurisdiction by the bankruptcy court" and that "[u]nder developing case law, it appears that a bankruptcy court cannot exercise supplemental jurisdiction").

This case is a particularly appropriate vehicle to address the question whether bankruptcy courts may exercise supplemental jurisdiction, because it presents that question in the context of a recurring procedural dilemma for bankruptcy courts. Section 523(a) of the Bankruptcy Code sets out a number of exceptions to the general rule that preexisting debts are dischargeable in bankruptcy and permits a creditor to obtain a declaration that such a debt is nondischargeable. *See* 11 U.S.C. § 523(a), (c). Such an action by a creditor "arises under" the Bankruptcy Code, 28 U.S.C. § 1334(b), and thus is plainly within the bankruptcy court's jurisdiction.

In the course of adjudicating a proceeding seeking a declaration of nondischargeability, however, bankruptcy courts are often faced with the question whether they may also enter judgment on the underlying nondischargeable debt—generally, as here, an action arising solely under state law. That underlying state-law action neither "arises under" the Bankruptcy Code nor "arises in" a bankruptcy case. Nor is a claim seeking a judgment on a nondischargeable state-law debt "related to" the bankruptcy case within the meaning of section 1334(b). A proceeding seeking a judgment on a nondischargeable debt is a suit against the debtor personally, not against the estate, and a judgment on such a debt is

enforceable only against the debtor himself and those of his assets that fall outside the bankruptcy estate. By definition, therefore, the resolution of a dispute regarding a nondischargeable debt can have no effect on the bankruptcy estate—the touchstone of the "related to" jurisdiction under section 1334(b).

Instead, as the decision below reflects, the only possible rationale for permitting bankruptcy courts to exercise jurisdiction over such nondischargeable debts is that the claim falls within the supplemental jurisdiction because the underlying state-law action arises out of the same set of facts as the nondischargeability proceeding. Accordingly, this recurring procedural scenario starkly poses the question presented here—whether bankruptcy courts may exercise supplemental jurisdiction.

The specific question whether bankruptcy courts have jurisdiction to enter judgment on a nondischargeable debt has itself divided the lower federal courts. Although the courts of appeals to address the issue have held that bankruptcy courts do have such jurisdiction, numerous bankruptcy and district courts—along with every scholarly commentator to address the issue—have concluded that an action on a nondischargeable debt is not within section 1334(b)'s grant of jurisdiction. Because granting certiorari in this case would resolve this recurring procedural problem of substantial practical importance, this would be a particularly appropriate case in which to grant certiorari to resolve the entrenched and longstanding circuit split on the question whether bankruptcy courts may exercise section 1367's supplemental jurisdiction.

STATEMENT OF THE CASE

1. In March 1989, respondent Norman Sokoloff obtained a judgment in the Superior Court of California against petitioner Robert Sasson for $120,000, including prejudgment interest, for failure to pay on a promissory note.

Sasson obtained from the California state court a stay of that judgment pending appeal, on the condition that Sasson not dissipate any assets outside the ordinary course of business. Sasson, however, purchased property and paid debts that he owed to other creditors.

2. In May 1989, Sasson filed a voluntary bankruptcy petition under Chapter 7 of the Bankruptcy Code in the U.S. Bankruptcy Court for the Northern District of California. In connection with that bankruptcy, Sokoloff brought an adversary proceeding against Sasson, seeking a declaration that the debt Sasson owed to Sokoloff was nondischargeable. Specifically, Sokoloff alleged that Sasson engaged in wrongful conduct designed to defraud him, both before and after the debt was reduced to judgment. Accordingly, Sokoloff sought a declaration that the debt on the promissory note was nondischargeable in bankruptcy because, *inter alia*, it was a debt for "willful and malicious injury." 11 U.S.C. § 523(a)(6). By order dated June 13, 1991, the bankruptcy court found in favor of Sokoloff and entered judgment declaring that Sokoloff's claim against Sasson was nondischargeable.

In addition to the declaration that the debt was nondischargeable, Sokoloff also asked the bankruptcy court to enter judgment against Sasson on the underlying state-law claim. The bankruptcy court did so, entering judgment in Sokoloff's favor in the amount of $148,142.46, which included post-judgment interest. The bankruptcy case was thereafter closed. Sokoloff then sought to collect on the bankruptcy court judgment, but was unable to do so.

3. In April 2002, the bankruptcy court granted a motion by Sasson to reopen his bankruptcy case. Sasson thereupon filed a motion, pursuant to Fed. R. Civ. P. 60(b), to vacate the 1991 judgment. He argued that the 1991 judgment was void *ab initio* because the bankruptcy court never had subject-matter jurisdiction over the underlying state-law claim against him. The bankruptcy court denied the motion. On appeal, the Bankruptcy Appellate Panel of the Ninth Circuit ("BAP") affirmed.

4. The Ninth Circuit affirmed the BAP's ruling. In finding that the bankruptcy court had subject-matter jurisdiction over the state-law claim for damages, the Ninth Circuit did not suggest that the resolution of that dispute might have any effect on the bankruptcy estate, which is the standard test for determining the existence of "related to" jurisdiction. *See Celotex Corp.* v. *Edwards*, 514 U.S. 300, 308 & n.6 (1995). Instead, the court of appeals rested its determination on its conclusion that section 1334(b)'s grant of "related to" jurisdiction also includes section 1367's grant of supplemental jurisdiction. "[A]t present, the bankruptcy court's 'related to' jurisdiction also includes the district court's supplemental jurisdiction pursuant to 28 U.S.C. § 1367 'over all other claims that are so related to claims in the action within [the court's] original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.'" Pet. App. 6a (citation omitted; second brackets in original).

As further support for its holding, the Ninth Circuit noted that it had previously held, in *Cowen* v. *Kennedy (In re Kennedy)*, 108 F.3d 1015, 1016 (9th Cir. 1997), that bankruptcy courts have "'jurisdiction to enter a monetary judgment on a disputed state law claim in the course of making a determination that a debt is nondischargeable.'" Pet. App. 4a. The court also stated that Congress had expressly provided the bankruptcy courts with that power under the Bankruptcy Act of 1898 (*id.* at 4a) pointed to the broad equitable powers enjoyed by bankruptcy courts (*id.* at 5a) and cited the decisions of various other courts of appeals that have allowed bankruptcy courts to enter money judgments on an underlying claim as ancillary to their power to resolve a complaint of nondischargeability (*id.* at 7a (citing cases)).[2]

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[2] The court of appeals also rejected Sasson's argument that principles of *res judicata* should have prevented the bankruptcy court from entering judgment on a claim that was previously litigated to judgment in state court, concluding that on the facts of this case the bankruptcy court did not abuse its discretion in its exercise of its "inherent equitable power to fashion relief." Pet. App. 13a.

REASONS FOR GRANTING THE WRIT

The courts of appeals are divided on the question whether Congress's grant of "related to" jurisdiction in section 1334(b)—which extends only to actions that may have an effect on the bankruptcy estate—precludes bankruptcy courts from exercising the broader supplemental jurisdiction over "related" claims that section 1367(a) grants to district courts in civil actions. This case presents that issue in a context that involves a recurring procedural dilemma for the bankruptcy courts. In considering whether a particular debt is nondischargeable, bankruptcy courts are commonly asked to enter judgment in favor of the creditor on that underlying debt—typically a state-law claim. As the decision below reflects, the exercise of jurisdiction over such a claim—which is outside section 1334's bankruptcy jurisdiction—raises the question whether bankruptcy courts may exercise supplemental jurisdiction under section 1367. Accordingly, this case is a particularly appropriate vehicle in which to resolve the circuit split on the issue whether bankruptcy courts may exercise section 1367's supplemental jurisdiction.

I. THE COURTS OF APPEALS HAVE DIVIDED ON WHETHER BANKRUPTCY COURTS MAY EXERCISE SUPPLEMENTAL JURISDICTION UNDER SECTION 1367

The current grant of jurisdiction to the federal district courts over bankruptcy matters was enacted as part of the Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, 92 Stat. 2549, and is codified at section 1334 of title 28. As relevant here, section 1334(b) grants the district courts "original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11." 28 U.S.C. § 1334(b).[3]

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[3] Proceedings "arising under title 11" are those in which the cause of action is created by the Bankruptcy Code, such as a proceeding seeking a declaration that a particular debt is nondischargeable under section 523(a) of the Bankruptcy Code. *See*, 1 *Collier on Bankruptcy* ¶ 3.01[4][c][i] (Lawrence P. King ed., 15th rev. ed. 2005). Proceedings "arising in . . . cases under title 11" are matters that do not originate in an express right or cause of action under the Bankruptcy Code, but can arise only in a bankruptcy case. *See id.* ¶ 3.01[4][c][iv]. Finally, the grant of jurisdiction

There is a deep and longstanding circuit split on the question whether the grant of "related to" jurisdiction in section 1334 precludes the bankruptcy courts from exercising supplemental jurisdiction under section 1367. The Third, Fifth, Seventh, and Eleventh Circuits have held that bankruptcy courts cannot exercise section 1367's supplemental jurisdiction. *See supra* p. 5 n.1. As the Fifth Circuit reasoned: "Congress has gone to great lengths to determine what proceedings may be tried by bankruptcy courts, and the exercise of ancillary and pendent jurisdiction could subsume the more restrictive 'relate[d] to' and 'arising in' jurisdiction, such that the latter would be rendered substantially, if not entirely, superfluous." *Walker* v. *Cadle Co.* (*In re Walker*), 51 F.3d 562, 573 (5th Cir. 1995) (internal quotation omitted); *see also Bass* v. *Denney (In re Bass)*, 171 F.3d 1016, 1024 (5th Cir. 1999) (same). The Third, Seventh, and Eleventh Circuits have reached the same conclusion. *See Bobroff* v. *Continental Bank* (*In re Bobroff*), 766 F.2d 797, 802 (3d Cir. 1985); *Wisconsin Dep't of Indus., Labor & Human Relations* v. *Marine Bank Monroe* (*In re Kubly*), 818 F.2d 643, 645 (7th Cir. 1987); *Miller* v. *Kemira* (*In re Lemco Gypsum, Inc.*), 910 F.2d 784, 789 (11th Cir. 1990).

By contrast, the Second and Ninth Circuits have permitted bankruptcy courts to exercise the broader form of supplemental jurisdiction granted to the district courts by

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over proceedings "related to cases under title 11" empowers district courts to adjudicate disputes that exist independently of the bankruptcy case. The touchstone of "related to" jurisdiction is whether the resolution of the dispute could affect the bankruptcy estate. *See Northern Pipeline Constr. Co.* v. *Marathon Pipe Line Co.*, 458 U.S. 50, 54 (1982) (plurality) (explaining that the "related to" provision "empowers bankruptcy courts to entertain a wide variety of cases involving claims that may affect the property of the estate"); *Celotex, Corp.* v. *Edwards*, 514 U.S. 300, 308 & n.6 (1995) (noting that nine courts of appeals had adopted the Third Circuit's standard for "related-to" jurisdiction, articulated in *Pacor, Inc.* v. *Higgins*, 743 F.2d 984 (3d Cir. 1984), under which the test is "whether the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy," while two other courts of appeals had adopted "slightly different" formulations that nevertheless focus on the "effect on the bankruptcy estate").

section 1367. As the Ninth Circuit explained in the decision below: "at present, the bankruptcy court's 'related to' jurisdiction also includes the district court's supplemental jurisdiction pursuant to 28 U.S.C. § 1367." Pet. App. 5a; *see also Klein* v. *Civale & Trovato, Inc. (In re Lionel Corp.)*, 29 F.3d 88, 92 (2d Cir. 1994) ("The bankruptcy court had jurisdiction over the Owners' claims against CTI under principles of supplemental jurisdiction. *See* 28 U.S.C. § 1367.").[4]

The division in the district courts and bankruptcy courts is equally pronounced, with more than a dozen cases on each side of the issue.[5] In addition, the disagreement among the

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[4] *See also Montana* v. *Goldin (In re Pegasus Gold Corp.)*, 394 F.3d 1189, 1195 (9th Cir. 2005); *Security Farms* v. *International Bhd. of Teamsters*, 124 F.3d 999, 1008 & n.5 (9th Cir. 1997) (permitting district court to exercise 1367 jurisdiction as supplemental to section 1334 jurisdiction).

[5] Permitting or speaking favorably of the exercise of section 1367 jurisdiction as supplemental to jurisdiction under section 1334(b): *McCarthy* v. *Radcliffe (In re Radcliffe)*, 317 B.R. 581, 590 (Bankr. D. Conn. 2004); *Pierce* v. *Conseco Fin. Serv. Corp. (In re Lockridge)*, 303 B.R. 449, 454-456 (Bankr. D. Ariz. 2003); *Masterwear Corp.* v. *Rubin, Baum, Levin, Constant & Friedman (In re Masterwear Corp.)*, 241 B.R. 511, 517 n.6 (Bankr. S.D.N.Y. 1999); *Official Comm. of Unsecured Creditors* v. *Riviera Med. Dev. Corp. (In re South Bay Med. Assoc.)*, 184 B.R. 963, 970 (Bankr. C.D. Cal. 1995); *Official Committee of Unsecured Creditors* v. *Ganz (In re Summit Airlines, Inc.)*, 160 B.R. 911, 923 (Bankr. E.D. Pa. 1993); *Jones* v. *Woody (In re W.J. Servs., Inc.)*, 139 B.R. 824, 826 (Bankr. S.D. Tex. 1992); *Goger* v. *Merchants Bank of Atlanta (In re Feifer Indus.)*, 141 B.R. 450, 452 (Bankr. N.D. Ga. 1991); *Hawkins* v. *Eads (In re Eads)*, 135 B.R. 387, 393-397 (Bankr. E.D. Cal. 1991); *Kinney* v. *Higher Educ. Assistance Found. (In re Kinney)*, 114 B.R. 670, 672 (Bankr. D. Neb. 1990); *Dechert Price & Rhoads* v. *Direct Satellite Commc'ns, Inc. (In re Direct Satellite Commc'ns, Inc.)*, 91 B.R. 5, 6 (Bankr. E.D. Pa. 1988); *Aerni* v. *Columbus Fed. Sav. (In re Aerni)*, 86 B.R. 203, 207 (Bankr. D. Neb. 1988); *Petrolia Corp.* v. *Elam (In re Petrolia Corp.)*, 79 B.R. 686, 690-695 (Bankr. E.D. Mich. 1987); *Neill* v. *Borreson (In re John Peterson Motors Inc.)*, 56 B.R. 588, 596 (Bankr. D. Minn. 1986); *Providers Fid. Life Ins. Co.* v. *Tidewater Group, Inc. (In re Tidewater Group, Inc.)*, 63 B.R. 670, 673 (Bankr. N.D. Ga. 1986); *Total Petroleum, Inc.* v. *Coral Petroleum, Inc. (In re Coral Petroleum, Inc.)*, 62 B.R. 699, 708 (Bankr. S.D. Tex. 1986); *In re Wood*, 52 B.R. 513, 522-524 (Bankr. N.D. Ala. 1985); *Cook* v. *Commodity Credit Corp. (In re Earl Roggenbuck Farms, Inc.)*, 51 B.R. 913, 925-926 (Bankr. E.D. Mich. 1985).

courts on this issue has received a great deal of scholarly attention. *See* Susan Block-Lieb, *The Case Against Supplemental Jurisdiction: A Constitutional, Statutory and Policy Analysis*, 62 Fordham L. Rev. 721, 756 (1994) ("the majority of courts that have addressed the issue have concluded that . . . bankruptcy courts are empowered to exercise supplemental bankruptcy jurisdiction"); Ralph Brubaker, *On the Nature of Federal Bankruptcy Jurisdiction: A General Statutory and Constitutional Theory*, 41

Rejecting or criticizing the exercise of such jurisdiction: *Henneghan* v. *Columbia Gas of Va., Inc. (In re Henneghan)*, 2005 WL 2267185, at *4-5 (Bankr. E.D. Va. June 22, 2005); *Securities Investor Prot. Corp.* v. *Murphy (In re Selheimer & Co.)*, 319 B.R. 384, 390 (Bankr. E.D. Va. 2005); *Singer* v. *Adamson (In re Adamson)*, 334 B.R. 1, 12 (Bankr. D. Mass. 2005); *Liquidating Trust* v. *Carramore Ltd. (In re Ha-Lo Indus., Inc.)*, 330 B.R. 663, 672-673 (Bankr. N.D. Ill. 2005); *Banc of Am. Inv. Servs., Inc.* v. *Fraiberg (In re Conseco)*, 305 B.R. 281, 285-287 (Bankr. N.D. Ill. 2004); *Doctors Hosp. of Hyde Park, Inc.* v. *Desnick (In re Doctors Hosp. of Hyde Park, Inc.)*, 308 B.R. 311, 318 (Bankr. N.D. Ill. 2004); *Porter* v. *NationsCredit Consumer Disc. Co. (In re Porter)*, 295 B.R. 529, 541-542 (Bankr. E.D. Pa. 2003); *Steele* v. *Ocwen Fed. Bank (In re Steele)*, 258 B.R. 319, 322 (Bankr. D.N.H. 2001); *McGlynn* v. *Credit Store, Inc.*, 234 B.R. 576, 584 (D.R.I. 1999); *Simmons* v. *Ford Motor Credit Co. (In re Simmons)*, 224 B.R. 879, 886 (N.D. Ill. 1998); *Davis* v. *Warren (In re Davis)*, 216 B.R. 898, 902 (Bankr. N.D. Ga. 1997); *Simmons* v. *Johnson, Curney & Fields, P.C. (In re Simmons)*, 205 B.R. 834, 845 (Bankr. W.D. Tex. 1997); *First Omni Bank* v. *Thrall (In re Thrall)*, 196 B.R. 959, 968-971 & n.8 (Bankr. D. Colo. 1996); *Romar Int'l Ga., Inc.* v. *SouthTrust Bank of Ala. (In re Romar Int'l Ga., Inc.)*, 198 B.R. 401, 407 (Bankr. M.D. Ga. 1996); *Adams* v. *Prudential Secs., Inc. (In re Found. for New Era Philanthropy)*, 201 B.R. 382, 397-398 & n.16 (Bankr. E.D. Pa. 1996); *Goldstein* v. *Marine Midland Bank (In re Goldstein)*, 201 B.R. 1, 6-7 (Bankr. D. Me. 1996); *Boyajian* v. *DeLuca (In re Remington Dev. Group, Inc.)*, 180 B.R. 365, 375 (Bankr. D.R.I. 1995); *Halvajian* v. *Bank of New York*, 191 B.R. 56, 58-59 (D.N.J. 1995); *Wilcox* v. *Houghton (In re Houghton)*, 164 B.R. 146, 148 (Bankr. W.D. Wash. 1994); *Fisher* v. *Federal Nat'l Mortgage Ass'n (In re Fisher)*, 151 B.R. 895, 898-899 (Bankr. N.D. Ill. 1993); *DaSilva* v. *American Sav.*, 145 B.R. 9, 12 (S.D. Tex. 1992); *SouthTrust Bank* v. *Alpha Steel Co., Inc. (In re Alpha Steel Co., Inc.)*, 142 B.R. 465, 470-471 (M.D. Ala. 1992); *Official Creditors' Comm. of Prods. Liability & Pers. Injury Claimants* v. *International Ins. Co. (In re Pettibone Corp.)*, 135 B.R. 847, 851-852 (Bankr. N.D. Ill. 1992); *Maislin Indus., U.S., Inc.* v. *Certified Brokerage Sys., Inc. (In re Maislin Ind.)*, 75 B.R. 170, 172 (Bankr. E.D. Mich. 1987).

Wm. & Mary L. Rev. 743, 928 (2000) ("many courts have concluded more recently that bankruptcy courts have no 'supplemental' bankruptcy jurisdiction whatsoever"); *see also* William L. Norton, Jr., 1 *Norton Bankr. Law & Practice* 2d, § 4:70 (2005) (noting both that "it has been held that § 1367(a) may be invoked as a basis for the exercise of jurisdiction by the bankruptcy court" and that "[u]nder developing case law, it appears that a bankruptcy court cannot exercise supplemental jurisdiction"). This Court should grant certiorari to resolve this entrenched division of authority among the courts of appeals.

II. THIS CASE IS A PARTICULARLY APPROPRIATE VEHICLE TO RESOLVE THE CIRCUIT SPLIT BECAUSE IT INVOLVES A RECURRING PRACTICAL ISSUE

The supplemental jurisdiction question arises here in the context of a nondischargeability action. The Bankruptcy Code makes certain types of debts nondischargeable, meaning that the creditor can continue to sue the debtor to recover the debt after the bankruptcy, notwithstanding the debtor's discharge. As relevant here, a debt for "willful and malicious injury" is nondischargeable. 11 U.S.C. § 523(a)(6). Determinations as to the dischargeability of a particular debt are commonly made by way of a proceeding for a declaratory judgment brought in the bankruptcy court, *see id.* § 523(c), a proceeding that "arises under" Title 11 and thus falls within the jurisdiction granted by section 1334(b).

In connection with such a declaratory judgment proceeding, creditors routinely seek to use the bankruptcy court forum also to obtain a judgment against the debtor on the underlying claim—typically a claim sounding in tort or contract and arising under state law. *See* Alan M. Ahart, *Enforcing Nondischargeable Money Judgments: The Bankruptcy Courts' Dubious Jurisdiction*, 74 Am. Bankr. L.J. 115, 116 (2000) (noting that "[m]ost" nondischargeability actions "not only ask the court to except particular debt(s) from discharge, but also to enter a money judgment against the debtor for the amount of the debts").

This dispute over the underlying nondischargeable debt does not fall within the "arising under" or "arising in" juris-

diction conferred by section 1334. Nor is it included within the "related to" jurisdiction, because such an action runs against the debtor personally, not against the estate. A judgment on such a debt can be enforced only against the debtor himself and those of his assets (such as post-bankruptcy earnings) that fall outside the bankruptcy estate. *See* 11 U.S.C. § 541. The resolution of a dispute regarding a nondischargeable debt can thus have no effect on the bankruptcy estate—the touchstone of the "related to" jurisdiction under section 1334(b). Indeed, many bankruptcy courts that have considered the question whether an action on a nondischargeable debt can come within the "related to" jurisdiction have held that it cannot, for precisely this reason.[6]

Like the Ninth Circuit, the Fourth, Sixth, and Eighth Circuits have nevertheless held that bankruptcy courts may enter judgment on a nondischargeable debt. In support of that conclusion, those courts have not held that such a debt could have any effect on the bankruptcy estate, but have instead relied on the factual nexus between the nondischargeability proceeding itself and the underlying state-law claim, and the supposed judicial economy arising from deciding both matters together—the classic rationale for the exercise of supplemental jurisdiction.[7] That is, those courts' holdings

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[6] *See, e.g., ATS Cases, Inc.* v. *Belli (In re Belli)*, 2005 WL 3263925, at *1 & n.3 (Bankr. D. Mass. June 29, 2005); *Cotten* v. *Cotten (In re Cotten)*, 318 B.R. 583, 587 & n.2 (Bankr. W.D. Okla. 2004); *American Express Centurion Bank* v. *Losanno (In re Losanno)*, 291 B.R. 1, 1 (Bankr. D. Mass. 2003); *Porter Capital Corp.* v. *Hamilton (In re Hamilton)*, 282 B.R. 22, 23-26 (Bankr. W.D. Okla. 2002); *Thrall* v. *First Omni Bank (In re Thrall)*, 196 B.R. 959, 969 (Bankr. D. Colo. 1996); *Barrows* v. *Illinois Student Assistance Comm'n (In re Barrows)*, 182 B.R. 640, 653 (Bankr. D.N.H. 1994). Scholarly commentators have agreed. *See* Brubaker, 41 Wm. & Mary L. Rev. at 916-918; Ahart, 74 Am. Bankr. L. J. at 116.

[7] *See Longo* v. *McLaren (In re McLaren)*, 3 F.3d 958, 966 (6th Cir. 1993) ("allowing the bankruptcy judge to settle both the dischargeability of the debt and the amount of the money judgment accords with the rule generally followed by courts of equity that having jurisdiction of the parties to controversies brought before them, they will decide all matters in dispute and decree complete relief") (internal quotations and citation omitted); *Abramowitz* v. *Palmer*, 999 F.2d 1274, 1279 (8th Cir. 1993)

necessarily rest on the conclusion that bankruptcy courts may exercise supplemental jurisdiction—a conclusion made explicit in the Ninth Circuit's decision below, which opined that "the bankruptcy court's 'related to' jurisdiction also includes the district court's supplemental jurisdiction pursuant to 28 U.S.C. § 1367." Pet. App. 6a.[8]

("[t]he small step the bankruptcy court took between determining Toni Palmer's liability for fraud and entering a money judgment against Toni Palmer as a result of that fraud was a logical exercise of related to jurisdiction"); *Hall* v. *Davenport*, 1996 WL 34674, 76 F.3d 372 (4th Cir. 1996) (unpublished) ("Nor is there reason to doubt that bankruptcy courts have the authority to enter money judgments. . . . Surely to be nondischargeable, the court must have found a debt to be due and owing."); *accord Lang* v. *Lang (In re Lang)*, 293 B.R. 501, 516-517 & nn.17-19 (BAP 10th Cir. 2003); *Valencia* v. *Lucero (In re Valencia)*, 213 B.R. 594, 596 (D. Colo. 1997); *Snyder* v. *Devitt (In re Devitt)*, 126 B.R. 212, 215-216 (Bankr. D. Md. 1991); *Builders Steel Co.* v. *Heidenreich (In re Heidenreich)*, 216 B.R. 61, 63 (Bankr. N.D. Okla. 1998); *Baker* v. *Friedman (In re Friedman)*, 300 B.R. 149, 150-151 (Bankr. D. Mass. 2003); *Harris* v. *United States Fire Ins. Co.*, 162 B.R. 466, 468 (E.D. Va. 1994); *Hi-Qual Roofing & Siding Materials, Inc.* v. *Ridsdale (In re Ridsdale)*, 286 B.R. 238, 239 (Bankr. W.D.N.Y. 2002) (all exercising jurisdiction over underlying claims).

The Seventh Circuit, which held in *Wisconsin Department of Industry, Labor & Human Relations* v. *Marine Bank Monroe (In re Kubly)*, 818 F.2d 643, 645-646 (7th Cir. 1987), that bankruptcy courts may not exercise supplemental jurisdiction, reached a contrary result in *N.I.S. Corp.* v. *Hallahan (In re Hallahan)*, 936 F.2d 1496, 1508 (7th Cir. 1991) ("allowing the bankruptcy judge to settle both the dischargeability of the debt and the amount of the money judgment accords with the rule generally followed by courts of equity that having jurisdiction of the parties to controversies brought before them, they will decide all matters in dispute and decree complete relief"). The *Hallahan* decision, however, neither cites to nor mentions the prior inconsistent decision in *Kubly*.

[8] Commentators have similarly recognized that bankruptcy courts that exercise jurisdiction over nondischargeable debts are exercising supplemental jurisdiction. *See* Brubaker, 41 Wm. & Mary L. Rev. at 918-919 (the analysis of the cases that have found jurisdiction over nondischargeable debts is "quite conspicuously a . . . supplemental approach to the federal bankruptcy jurisdiction"); Block-Lieb, 62 Fordham L. Rev. at 816-817 (stating that a proceeding objecting to discharge arises under title 11 and further stating that such a proceeding will involve "a common nucleus of operative fact" between the nondischargeability claim and a claim seeking a judgment on the underlying debt).

The Ninth Circuit's judgment necessarily rests on the conclusion that the bankruptcy court may exercise supplemental jurisdiction. As the Ninth Circuit observed, the 1970 amendments to the Bankruptcy Act of 1898 permitted bankruptcy courts to enter judgments on nondischargeable debts. Pet. App. 4a. But that prior statutory scheme was replaced entirely by the 1978 Bankruptcy Code, which included a wholesale revision of the provisions governing the jurisdiction of the bankruptcy courts. Thus, Congress carefully considered and completely overhauled the entire bankruptcy jurisdictional scheme and in doing so chose to eliminate the prior grant of jurisdiction to enter judgment on nondischargeable debts.

Nor does section 105 of the Bankruptcy Code, which provides that the court may "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title," provide an independent basis for the exercise of subject-matter jurisdiction. *See* Pet. App. 5a. To the contrary, the law is clear that section 105 cannot expand the bankruptcy court's authority beyond the jurisdiction expressly granted by section 1334. *See, e.g., In re Combustion Eng'g*, 391 F.3d 190, 225 (3d Cir. 2004) ("§ 105 does not provide an independent source of federal subject matter jurisdiction."); *In re Johns-Manville Corp.*, 801 F.2d 60, 63 (2d Cir. 1986) ("Section 105(a) does not, however, broaden the bankruptcy court's jurisdiction, which must be established separately."); 2 *Collier on Bankruptcy* ¶ 105.01[2] (Lawrence P. King ed., 15th rev. ed. 2005) (stating that "if the court ha[s] jurisdiction" then section 105 orders can be "used to protect and further that jurisdiction"); *see also Celotex*, 514 U.S. at 327 (Stevens, J., dissenting) (section 105 "is not an independent source of jurisdiction").

Accordingly, the Ninth Circuit's holding that the bankruptcy court had jurisdiction to enter judgment in Sokoloff's favor on his claim against Sasson rests firmly on its conclusion that the bankruptcy court had supplemental jurisdiction over that claim. Because the circuits are sharply divided on whether the bankruptcy courts may exercise that jurisdiction, this Court should grant certiorari to resolve that issue.

III. THE DECISION BELOW IS INCORRECT

A. The Specific Grant Of "Related To" Bankruptcy Jurisdiction Should Control Over The General Grant Of Supplemental Jurisdiction In Section 1367

Contrary to the reasoning of the Ninth Circuit, section 1334(b)'s specific grant of jurisdiction over proceedings "related to" the bankruptcy case does not "include" section 1367's broader grant of supplemental jurisdiction.

The Ninth Circuit failed to realize that the "related to" jurisdiction conferred by section 1334(b) is itself a form of supplemental jurisdiction. *See, e.g., In re Bass*, 171 F.3d at 1024; *see also* Block-Lieb, 62 Fordham L. Rev. at 779. Its function is to permit courts sitting in bankruptcy to adjudicate claims that would otherwise be outside bankruptcy jurisdiction—including claims that, absent a bankruptcy, could be heard only in state court—when those claims can affect the assets of the bankruptcy estate. "Related to" jurisdiction thus augments the basic grant of power over core bankruptcy matters by permitting the adjudication of claims that fall outside that core, but that impinge on the central concerns of the bankruptcy by affecting the assets available for distribution to creditors.

But "related to" jurisdiction under section 1334(b) is a different—and narrower—kind of supplemental jurisdiction than that granted in section 1367. Because the core concern of bankruptcy is the administration of the bankruptcy estate and the distribution of the estate's assets to creditors, "related to" jurisdiction is limited to claims that affect that function. In other words, "related to" jurisdiction is the form of supplemental jurisdiction that is appropriate to bankruptcy proceedings, which are in essence *in rem* proceedings regarding the bankruptcy estate. *See Central Va. Cmty. College* v. *Katz*, 126 S. Ct. 990, 995 (2006) ("Bankruptcy jurisdiction, at its core, is *in rem*."). "Related to" jurisdiction is jurisdiction over matters "related to" the *res*.

By contrast, section 1367 provides a broader grant of supplemental jurisdiction to district courts adjudicating "civil actions" over all matters that form part of the same

case or controversy as the civil action in question. Translating that grant of jurisdiction into bankruptcy is conceptually problematic, since a bankruptcy case is not analogous to a unitary "civil action." Rather, it is composed of numerous discrete "civil proceedings," which together comprise the "bankruptcy case."

Indeed, Congress made that distinction clear, using different statutory language in the grant of bankruptcy jurisdiction from that used in creating other sources of federal jurisdiction. *Compare* 28 U.S.C. § 1334(b) (granting jurisdiction of "all *civil proceedings* arising under title 11, or arising in or related to cases under title 11") *with id.* § 1331 (granting jurisdiction over "*civil actions* arising under the Constitution, laws or treaties of the United States") *and id.* § 1332 (granting jurisdiction over "all *civil actions* where the matter in controversy exceeds the sum of $75,000" and the diversity requirements are satisfied (all emphases added)).

As interpreted by the Ninth Circuit below, however, section 1367 would grant bankruptcy courts the authority to resolve any matter with a factual nexus to any of the many "proceedings" that make up the bankruptcy case. Such a sweeping grant of supplemental jurisdiction would be far afield from the central purpose of bankruptcy and at odds with the statutory text.

As the Fifth Circuit concluded, Congress's considered choice to make a specific grant of one type of supplemental jurisdiction in bankruptcy—the type that is appropriate given the *in rem* nature of a bankruptcy case—is powerful evidence that Congress did not intend to confer upon bankruptcy courts the far more expansive supplemental jurisdiction that the Ninth Circuit below held was "included" in 1334's grant of "related to" jurisdiction. "Congress has gone to great lengths to determine what proceedings may be tried by bankruptcy courts," and permitting those courts to exercise the more general supplemental jurisdiction found in section 1367 would render the "more restrictive" grant in section 1334(b) "substantially, if not entirely superfluous." *In re Bass*, 171 F.3d at 1024 (citing *In re Walker*, 51 F.3d at 570-573).

B. Congress Has Provided For Referral To The Bankruptcy Court Only Of The District Court's Section 1334 Jurisdiction—Not Supplemental Jurisdiction Exercised Under Section 1367

Section 157 of title 28—which establishes the relationship between the district court and the bankruptcy courts—confirms that Congress did not intend bankruptcy courts to exercise supplemental jurisdiction.

Section 1367 grants supplemental jurisdiction only to "district courts." Section 1334 likewise grants jurisdiction over bankruptcy cases and proceedings only to the district courts. Section 157, in turn, permits the district courts to refer "any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11"—that is to say, those cases and proceedings that are within the section 1334 bankruptcy jurisdiction—"to the bankruptcy judges for the district." 28 U.S.C. § 157(a). Those judges are described by statute as "a unit of the district court to be known as the bankruptcy court for that district." *Id.* § 151.[9]

There is no provision for referring matters within the section 1367 supplemental jurisdiction to the bankruptcy courts. Rather, the only proceedings that may be referred to bankruptcy judges are those enumerated in section 1334(b). 28 U.S.C. § 157(a). That Congress provided no

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[9] Under the Bankruptcy Reform Act of 1978, all of the jurisdiction granted to the district courts was to be exercised by bankruptcy judges. In *Northern Pipeline*, 458 U.S. 50, this Court invalidated that grant of judicial power to the non-Article III bankruptcy courts. In response, Congress adopted the Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, 98 Stat. 333, which amended the allocation of authority between the district courts and the bankruptcy courts to ensure that bankruptcy courts could not enter final judgments in matters constitutionally required to be adjudicated by an Article III tribunal, absent parties' consent. Accordingly, when district courts refer matters to the bankruptcy judges that are not "core" bankruptcy matters—those as to which *Northern Pipeline* ensures a right to an Article III tribunal—the bankruptcy judges act essentially as federal magistrates, issuing proposed findings and conclusions that are subject to *de novo* review in the district court. *See* 28 U.S.C. § 157.

mechanism for referring proceedings within the "supplemental jurisdiction" to the bankruptcy judges is strong evidence that it did not intend bankruptcy courts to exercise such jurisdiction.

The Ninth Circuit accordingly erred in holding that the bankruptcy court's "related to" jurisdiction "includes" the supplemental jurisdiction provided in section 1367. This Court should grant the petition for certiorari.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 03-16364

IN RE ROBERT SASSON, *Debtor.*

ROBERT SASSON, *Appellant,*

v.

NORMAN F. SOKOLOFF, M.D., individually and as Trustee for CAMELOT MEDICAL GROUP, INC., PROFIT SHARING PLAN, *Appellee.*

Argued and Submitted Feb. 15, 2005
Filed Aug. 25, 2005
Amended Sept. 13, 2005

Appeal from the Ninth Circuit Bankruptcy Appellate Panel; Perris, Meyers, and Marlar, Bankruptcy Judges, Presiding

BAP No. NC-02-01410-MaMeP

[424 F.3d 864]

[866]

* * *

Before: SIDNEY R. THOMAS, SUSAN P. GRABER, and RICHARD A. PAEZ, Circuit Judges.

THOMAS, Circuit Judge:

In this appeal, we are presented with the question of whether a bankruptcy court has subject matter jurisdiction to enter a money judgment in a nondischargeability adversary proceeding where the underlying debt has been reduced to judgment in state court. We conclude that it may

and affirm the decision of the Ninth Circuit Bankruptcy Appellate Panel ("BAP").

I

In 1988, Sokoloff, as trustee of Camelot Medical Group, Inc., Profit Sharing Plan, obtained a judgment against Sasson on a cross-complaint for breach of a promissory note. A California Superior Court entered judgment against Sasson for $120,000, plus accrued interest and statutory costs.

Before Sokoloff could enforce the judgment, Sasson filed a motion for reconsideration and obtained a stay of enforcement pending determination of the motion for reconsideration. The stay was granted subject to the condition that Sasson "not dissipate any assets except in the normal course of business." While the stay was in place and without informing the court of his actions, Sasson dissipated the majority of his assets through dissolution proceedings with his wife, purchase of a new property, creation of encumbrance on that property and ultimately by payment to other creditors. The court denied Sasson's motion for reconsideration, and Sokoloff recorded an abstract of judgment. At that point, however, the judgment was uncollectible.

Subsequently, Sasson filed a voluntary petition for relief under Chapter 7 of the [867] Bankruptcy Code, 11 U.S.C. §§ 301, 701-784 in the Northern District of California. His bankruptcy schedule did not mention Sasson's recent transfer of assets. Sokoloff then filed a complaint seeking a determination of nondischargeability of the state court judgment under 11 U.S.C. § 523(a)(6) and a denial of discharge under 11 U.S.C. § 727(a)(2).[1] The bankruptcy court rejected

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[1] Under 11 U.S.C. § 523(a)(6) of the Bankruptcy Code, any debt "for willful and malicious injury by the debtor to another entity or to the property of another entity" shall not be dischargeable in bankruptcy. Under 11 U.S.C. § 727(a)(2), a debtor may not obtain a discharge if "the debtor, with intent to hinder, delay, or defraud a creditor ... has transferred, removed, destroyed, mutilated, or concealed, or has permitted to be transferred, removed, destroyed, mutilated, or concealed ... property of the

the § 727(a)(2) claim, but found that Sasson's transfer of assets in violation of the state court stay constituted a willful and malicious injury under § 523(a)(6). The court entered a judgment for $148,142.46 plus costs and accruing interest. Sasson filed an appeal of this decision, but later dismissed it. Subsequently, both Sasson's bankruptcy and the adversary proceeding were closed by the bankruptcy court.

Sokoloff continued to pursue collection remedies in bankruptcy court. Sokoloff filed a notice of the judgment lien and recorded an abstract of judgment. Sokoloff then obtained a Writ of Execution to the United States Marshal and instructed the Marshal to levy on Sasson's wages. Sasson filed a claim of exemption, which the court granted in part.

In 2001, Sokoloff renewed the 1991 Judgment. The bankruptcy court issued an Abstract of Judgment for $239,160.42 on July 9, 2001, which was then recorded. Subsequently, the bankruptcy court granted Sasson's ex-parte motion to reopen his Chapter 7 proceedings for sixty days. Sasson then filed a motion pursuant to Federal Rule of Civil Procedure 60(b) to vacate the 1991 money judgment and to quash the 2001 abstract of judgment. In his motion, Sasson argued that the bankruptcy court lacked subject matter jurisdiction to enter a new federal money judgment and therefore the renewal of judgment and abstract of judgment were void ab initio. The bankruptcy court denied the motion after a hearing. Sasson filed a notice of appeal, which was referred to the BAP. The BAP affirmed the bankruptcy court, holding that the bankruptcy court had jurisdiction both to enter the 1991 judgment of nondischargeability and to determine the amount of damages caused by Sasson's post-judgment conduct. Sokoloff timely appealed the BAP decision.

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debtor, within one year before the date of the filing of the petition." 11 U.S.C. § 727(a)(2).

We review both the bankruptcy court's and the BAP's interpretation of the Bankruptcy Code de novo. *Debbie Reynolds Hotel & Casino, Inc. v. Calstar Corp. (In re Debbie Reynolds Hotel & Casino, Inc.)*, 255 F.3d 1061, 1065 (9th Cir. 2001). We review a ruling on a motion to set aside a judgment as void de novo "because the question of the validity of a judgment is a legal one." *Export Group v. Reef Indus.*, 54 F.3d 1466, 1469 (9th Cir. 1995). We review the scope of the exercise of equitable power de novo, *Graves v. Myrvang (In re Myrvang)*, 232 F.3d 1116, 1124 (9th Cir. 2000), and the exercise of equitable power for an abuse of discretion, *id.* at 1121.

II

The bankruptcy court had jurisdiction to enter a money judgment in the adversary proceeding. We have long held that "the Bankruptcy Court has jurisdiction to enter [868] a monetary judgment on a disputed state law claim in the course of making a determination that a debt is nondischargeable." *Cowen v. Kennedy (In re Kennedy)*, 108 F.3d 1015, 1016 (9th Cir. 1997).

A

Our holding in *Kennedy* was firmly grounded. Under the original 1898 Bankruptcy Act, Pub. L. No. 55-171, 30 Stat. 544 (repealed 1978) (as amended through date of repeal) ("1898 Bankruptcy Act"), bankruptcy courts were considered to have equitable jurisdiction to issue orders in aid of a nondischargeability determination. *Local Loan Co. v. Hunt*, 292 U.S. 234, 240 (1934); *see also Pepper v. Litton*, 308 U.S. 295, 304 (1939) ("[F]or many purposes courts of bankruptcy are essentially courts of equity, and their proceedings inherently proceedings in equity." (internal quotation marks omitted)).

In 1970, Congress codified the power of bankruptcy courts, in the exercise of their power to declare debts nondischargeable, to "determine the remaining issues, render judgment, and make all orders necessary for the enforcement thereof." 1898 Bankruptcy Act § 17(c)(3). When Con-

gress enacted the Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, 92 Stat. 2549 ("Bankruptcy Code" or "Code"), Congress removed specific jurisdictional language in favor of a general broad jurisdictional grant. However, in doing so, it clearly intended to incorporate the specific pre-Code jurisdiction of the bankruptcy courts.[2] In addition, the Bankruptcy Code specifically provides that:

> *The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.* No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

11 U.S.C. § 105(a) (emphasis added). Thus, the bankruptcy court clearly has the power under the Bankruptcy Code to determine whether a debt is nondischargeable, to "determine the remaining issues, render judgment, and make all orders necessary for the enforcement thereof," and to "issue any order, process, or judgment that is necessary or appropriate in carrying out" the order of nondischargeability

In addition to continuation of the bankruptcy court's pre-Code jurisdiction and the specific grant of new powers, the Bankruptcy Code provided for the exercise of "original but not exclusive jurisdiction of all civil proceedings arising

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[2] The jurisdiction of bankruptcy courts under the Bankruptcy Code was to include "items that the bankruptcy courts are now able to bear [sic] under [the 1898] Act § 2a," including "determination of dischargeability of debts [and] liquidation of non-dischargeable debts." H.R. Rep. No. 95-595, at 446, 49 (1977) (footnote referencing 1898 Act § 17c omitted), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6401, 6010; see also *id.* at 363 (noting that "the comprehensive grant of jurisdiction prescribed in proposed [statute] . . . is adequate to cover the full jurisdiction that the bankruptcy courts have today over dischargeability and related issues under Bankruptcy Act § 17c"), *reprinted in* 1978 U.S.C.C.A.N. at 6319; S. Rep. No. 95-989, at 77 (1978) (same), *reprinted in* 1978 U.S.C.C.A.N. 5787, 5863.

under title 11, or arising in or related to cases under title 11." 28 U.S.C. § 1334(b). A bankruptcy court's "related to" jurisdiction is very broad, "including nearly every matter directly or indirectly related to the bankruptcy." *Mann v. Alexander Dawson (In re Mann)*, 907 F.2d 923, 926 n.4 (9th [869] Cir. 1990). The bankruptcy court's "related to" jurisdiction granted by the Bankruptcy Code derives directly from the Bankruptcy Clause, which grants Congress the power "[t]o establish ... uniform Laws on the subject of Bankruptcies throughout the United States." U.S. Const., art. 1, § 8. Congress expanded the Bankruptcy Court's Article I jurisdiction by granting federal district courts with "original and exclusive jurisdiction of all cases under title 11." 28 U.S.C. § 1334(a). Thus, at present, the bankruptcy court's "related to" jurisdiction also includes the district court's supplemental jurisdiction pursuant to 28 U.S.C. § 1367 "over all other claims that are so related to claims in the action within [the court's] original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution." *See Montana v. Goldin (In re Pegasus Gold Corp.)*, 394 F.3d 1189, 1195 (9th Cir. 2005); *Sec. Farms v. Int'l Bhd. of Teamsters*, 124 F.3d 999, 1008 n.5 (9th Cir. 1997).

Even the discharge of a debtor does not automatically deprive the federal courts of jurisdiction over a claim "related to" the bankruptcy. *See Kieslich v. United States (In re Kieslich)*, 258 F.3d 968, 971 (9th Cir. 2001). Indeed, we have held that a bankruptcy court's "related to" jurisdiction includes post-confirmation jurisdiction over state court actions such as breach of contract, breach of convenant of good faith and fair dealing, and fraud when those claims have a "close nexus" to the bankruptcy proceeding. *In re Pegasus Gold Corp.*, 394 F.3d at 1194; *see also Celotex Corp. v. Edwards*, 514 U.S. 300, 309 (1995). We have also held that bankruptcy courts have post-discharge jurisdiction to enjoin collection actions, even if those actions occur in another country. *Hong Kong & Shanghai Banking Corp. v. Simon (In re Simon)*, 153 F.3d 991, 996 (9th Cir. 1998).

In addition, bankruptcy courts retain their traditional equitable powers under the Bankruptcy Code. *Johnson v. Home State Bank*, 501 U.S. 78, 88 (1991) (per curiam) ("[T]he bankruptcy court retains its broad equitable power to issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of the Code.") (quotation marks omitted). As the Supreme Court has instructed, when a creditor files a claim in bankruptcy, "the creditor triggers the process of 'allowance and disallowance of claims,' thereby subjecting himself to the bankruptcy court's equitable power." *Langenkamp v. Culp*, 498 U.S. 42, 44 (1990) (quoting *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 58-59 (1989)). The bankruptcy court's equitable power is not unfettered; it must be exercised to carry out the provisions of the Bankruptcy Code. *Saxman v. Educ. Credit Mgmt. Corp. (In re Saxman)*, 325 F.3d 1168, 1174 (9th Cir. 2003). However, we have recognized that "a bankruptcy court is a court of equity and should invoke equitable principles and doctrines, refusing to do so only where their application would be 'inconsistent' with the Bankruptcy Code." *Beaty v. Selinger (In re Beaty)*, 306 F.3d 914, 922 (9th Cir. 2002) (citing *In re Myrvang*, 232 F.3d at 1124).

"Bankruptcy Courts have exclusive jurisdiction over nondischargeability actions brought pursuant to 11 U.S.C. § 523(a)(2), (4), (6) and (15)." *Rein v. Providian Fin. Corp.*, 270 F.3d 895, 904 (9th Cir. 2001). This is a dischargeability action brought pursuant to 11 U.S.C. § 523(a)(6). As we reasoned in *Kennedy*:

> "If it is acknowledged as beyond question that a complaint to determine dis-[870]chargeability of a debt is exclusively within the equitable jurisdiction of the bankruptcy court, then it must follow that the bankruptcy court may also render a money judgment in an amount certain without the assistance of a jury. This is true not merely because equitable jurisdiction attaches to the entire cause of action but more importantly because it is impossible to separate the determination of dischargeability

> function from the function of fixing the amount of the nondischargeable debt."

Kennedy, 108 F.3d at 1017-18 (quoting *Snyder v. Devitt (In re Devitt)*, 126 B.R. 212, 215 (Bankr. D. Md. 1991)). Our sister circuits have reached similar conclusions. *Porges v. Gruntal & Co. (In re Porges)*, 44 F.3d 159, 165 (2d Cir. 1995); *Longo v. McLaren (In re McLaren)*, 3 F.3d 958, 965-66 (6th Cir. 1993); *N.I.S. Corp. v. Hallahan (In re Hallahan)*, 936 F.2d 1496, 1507-08 (7th Cir. 1991). Given the text and history of the Bankruptcy Code and the bankruptcy court's inherent equitable powers, it is clear, as we held in *Kennedy*, that bankruptcy courts have jurisdiction and power to enter money judgments in adjudicating nondischargeability adversary proceedings.

B

Sasson attempts to distinguish *Kennedy* from this case because *Kennedy* involved an unliquidated claim. *Kennedy* made no such distinction, and there is no principled jurisdictional distinction to be drawn. There is nothing in the text of the Bankruptcy Code or its history that contains a jurisdictional exception for debts that have been liquidated to judgment. To hold otherwise would be to deprive the bankruptcy court of its exclusive jurisdiction over bankruptcy discharge pursuant to 11 U.S.C. § 523(a). As the Supreme Court has noted, "[s]ince 1970[], the issue of nondischargeability has been a matter of federal law governed by the terms of the Bankruptcy Code." *Grogan v. Garner*, 498 U.S. 279, 284 (1991) (citing *Brown v. Felsen*, 442 U.S. 127, 129-30 (1979)). The Bankruptcy Code provides that bankruptcy courts "may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105. Notably, it does not contain an additional clause stating "except when the debt has been liquidated to judgment."

The debtor invoked bankruptcy court subject matter and *in personam* jurisdiction by filing a voluntary petition in bankruptcy. With the commencement of the case, the bank-

ruptcy court acquired exclusive *in rem* jurisdiction over all the debtor's legal or equitable interests in property wherever located and by whomever held. 28 U.S.C. § 1334(e); *Commodity Futures Trading Comm'n v. Co Petro Mktg. Group, Inc.*, 700 F.2d 1279, 1282 (9th Cir. 1983). By filing a proof of claim, the creditor in this case became subject to the bankruptcy court's *in personam* jurisdiction, and the limitations of the Bankruptcy Code. *In re Simon*, 153 F.3d at 997. The parties were clearly subject to both subject matter and *in personam* jurisdiction of the bankruptcy court.

The fact that a debt has been previously liquidated to judgment does not deprive the bankruptcy court of jurisdiction, nor of any of its statutory and equitable power. It may, as we shall discuss in Part II.D, have an effect on the form of relief that the bankruptcy court grants in nondischargeability proceedings. However, it does not alter the *Kennedy* jurisdictional analysis. The existence of a state court judgment does not deprive the bankruptcy court of the statutory power to enter a new judgment of nondischargeability.

[871] C

Sasson argues that the *Rooker-Feldman* doctrine[3] alters this jurisdictional analysis. However, the *Rooker-Feldman* doctrine did not deprive the bankruptcy court of jurisdiction to enter the money judgment in the nondischargeability adversary proceeding. The *Rooker-Feldman* doctrine is based on the statutory proposition that federal district courts are courts of original, not appellate, jurisdiction. *See* 28 U.S.C. §§ 1331, 1332. Therefore, federal district courts have "no authority to review the final determinations

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[3] The doctrine takes its name from *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923), and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983). *Rooker* held that federal statutory jurisdiction over direct appeals from state courts lies exclusively in the Supreme Court and is beyond the original jurisdiction of federal district courts. 263 U.S. at 415-16. *Feldman* held that this jurisdictional bar extends to particular claims that are "inextricably intertwined" with those a state court has already decided. 460 U.S. at 486-87.

of a state court in judicial proceedings." *Worldwide Church of God v. McNair*, 805 F.2d 888, 890 (9th Cir. 1986). Only the Supreme Court has original jurisdiction to review "[f]inal judgments or decrees rendered by the highest court of a State in which a decision could be had." 28 U.S.C. § 1257(a). As the Supreme Court has recently explained, the *Rooker-Feldman* doctrine "is confined to cases of the kind from which the doctrine acquired its name: cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Exxon Mobil Corp. v. Saudi Basic Indus.*, 125 S.Ct. 1517, 1521-22 (2005).

Application of the *Rooker-Feldman* doctrine in bankruptcy is limited by the separate jurisdictional statutes that govern federal bankruptcy law. *Gruntz v. County of Los Angeles (In re Gruntz)*, 202 F.3d 1074, 1079 (9th Cir. 2000) (en banc). The *Rooker-Feldman* doctrine has little or no application to bankruptcy proceedings that invoke substantive rights under the Bankruptcy Code or that, by their nature, could arise only in the context of a federal bankruptcy case. *Id.* at 1081. In the exercise of federal bankruptcy power, bankruptcy courts may avoid state judgments in core bankruptcy proceedings, *see, e.g.*, 11 U.S.C. §§ 544, 547, 548, 549, may modify judgments, *see, e.g.*, 11 U.S.C. §§ 1129, 1325, and, of primary importance in this context, may discharge them, *see, e.g.*, 11 U.S.C. §§ 727, 1141, 1328.

The *Rooker-Feldman* doctrine has no application here. Sasson is not seeking to have the bankruptcy court review the merits of the state court judgment; rather, he is attempting to prevent the bankruptcy court from giving effect to the state court judgment. Likewise, the creditor is not seeking modification of the state court judgment; it is attempting to save the judgment from bankruptcy discharge.

In entering judgment, the bankruptcy court was exercising its exclusive statutory power to determine whether a debt is dischargeable in a bankruptcy case. *See* 11 U.S.C. §§ 523(a)(6), 727(a)(2). Actions seeking a determination of

nondischargeability are core bankruptcy proceedings, *see* 28 U.S.C. § 157(b)(2)(I), and are not subject to the *Rooker-Feldman* doctrine. *See Gruntz*, 202 F.3d at 1081-82. The *Rooker-Feldman* doctrine did not deprive the bankruptcy court of jurisdiction to enter the money judgment in this case.

[872] D

Sasson also argues that the bankruptcy court lacked jurisdiction to enter a money judgment by operation of the full faith and credit statute, 28 U.S.C. § 1738, and the doctrines of res judicata and collateral estoppel. Unlike the *Rooker-Feldman* doctrine, these doctrines do not affect the jurisdiction of federal courts. *See, e.g., EEOC v. Children's Hosp. Med. Ctr. of N. Cal.*, 719 F.2d 1426, 1430 (9th Cir. 1983) (en banc) ("[R]es judicata is an affirmative defense under the rules of civil procedure. Fed. R. Civ. P. 8(c). It is not a jurisdictional doctrine."). Moreover, central to the operation of the bankruptcy courts is the idea that the debtor's debts, including debts liquidated to judgments, may be modified and discharged. *See, e.g.*, 11 U.S.C. §§ 544, 547, 548, 549, 727, 1129, 1141, 1325, 1328.

In short, "[f]inal judgments in state courts are not necessarily preclusive in United States bankruptcy courts." *Gruntz*, 202 F.3d at 1079. Thus, we must reject Sasson's argument that the doctrines of full faith and credit, *res judicata*, and collateral estoppel deprive the bankruptcy court of the jurisdiction to enter a money judgment in a discharge order involving liquidated debts.

This does not, of course, mean that the preclusion doctrines do not have any bearing on federal bankruptcy discharge proceedings. The Supreme Court has stated that "collateral estoppel principles do indeed apply in discharge exception proceedings pursuant to § 523(a)." *Grogan*, 498 U.S. at 284 n. 11. Further, we have held that "[t]he full faith and credit requirement of § 1738 compels a bankruptcy court in a § 523(a)(2)(A) nondischargeability proceeding to give collateral estoppel effect to a prior state court judgment."

Gayden v. Nourbakhsh (In re Nourbakhsh), 67 F.3d 798, 801 (9th Cir. 1995) (per curiam).[4]

In the bankruptcy discharge context, this means that "[i]f, in the course of adjudicating a state-law question, a state court should determine factual issues using standards identical to those of [§ 523], then collateral estoppel, in the absence of countervailing statutory policy, would bar relitigation of those issues in the bankruptcy court." *Brown*, 442 U.S. at 139 n.10. The classic example of the proper use of issue preclusion in discharge proceeding is when the amount of the debt has been determined by the state court and reduced to judgment. In that event, if there are no new issues, the bankruptcy court should ordinarily decline to allow the parties to relitigate the debt amount and should give the state court judgment as to the amount of preclusive effect. *Comer v. Comer (In re Comer)*, 723 F.2d 737, 740 (9th Cir. 1984). For the same reason, we have held that if the issue of fraud had [873] been litigated in state court, the state court judgment would preclude relitigation of the same issue by the bankruptcy court in discharge proceedings. *Nourbakhsh*, 67 F.3d at 801. Thus, the doctrines of preclusion

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[4] "In determining whether a party should be estopped from relitigating an issue decided in a prior state court action, the bankruptcy court must look to that state's law of collateral estoppel." *Diamond v. Kolcum (In re Diamond)*, 285 F.3d 822, 826 (citing *Nourbakhsh*, 67 F.3d at 800). Thus, we have held:

> Under California law, collateral estoppel only applies if certain threshold requirements are met: 'First, the issue sought to be precluded from relitigation must be identical to that decided in a former proceeding. Second, this issue must have been actually litigated in the former proceeding. Third, it must have been necessarily decided in the former proceeding. Fourth, the decision in the former proceeding must be final and on the merits. Finally, the party against whom preclusion is sought must be the same as, or in privity with, the party to the former proceeding.'

Cal-Micro, Inc. v. Cantrell, (In re Cantrell), 329 F.3d 1119, 1123 (9th Cir. 2003) (quoting *Harmon v. Kobrin (In re Harmon)*, 250 F.3d 1240, 1245 (9th Cir. 2001)).

play an important part in dischargeability proceedings by preventing the relitigation of factual and legal issues already determined by other courts.

However, a preexisting judgment does not have preclusive effect on the bankruptcy court's determination of dischargeability. The Supreme Court firmly rejected such an idea in *Brown*, specifically holding that "the bankruptcy court is not confined to a review of the judgment and record in the prior state-court proceedings when considering the dischargeability of respondent's debt." *Brown*, 442 U.S. at 138-39. We explained this analytical distinction in *Comer*:

> *Res judicata* should not be applied to bar a claim by a party in bankruptcy proceedings, nor should a bankruptcy judge rely solely on state court judgments when determining the nature of a debt for purposes of dischargeability, if doing so would prohibit the bankruptcy court from exercising its exclusive jurisdiction to determine dischargeability.

In re Comer, 723 F.2d at 740.

As we explained in *Comer*, determination of the amount of the debt by the state court did not impact the dischargeability decision:

> In the present case, applying *res judicata* to bar the bankruptcy court from looking behind the default judgment to determine the actual amount of the obligation would not preclude the exercise of the bankruptcy court's exclusive jurisdiction to determine the nature of the subject debt for purposes of dischargeability.

Id. In *Comer*, because the state court judgment involved the "*extent* of [the debtor's] obligation . . ., not the *nature* of that debt," it was not relevant to the bankruptcy court's exercise of its power to determine the dischargeability of a debt; therefore, we concluded that the bankruptcy court properly gave preclusive effect to the prior judgment. *Id.*

In this case, the parties were not relitigating the merits of the state court judgment in the nondischargeability pro-

ceeding. The adversary proceeding was based on Sasson's "willful and malicious" postjudgment conduct, not on the contractual breach that formed the basis of the state court judgment. Thus, the parties were litigating a different claim in the nondischargeability proceeding in bankruptcy, which was not precluded by the state court contract claim judgment. *Id.* Indeed, the creditor was not seeking to upend the state court judgment; rather, he simply was attempting to enforce it by defending against the discharge of the debt in bankruptcy. The bankruptcy court did not redetermine the amount of the state court debt; the court relied upon the state court determination. Thus, the various preclusion doctrines did not operate to prevent the bankruptcy court from entering a judgment of nondischargeability in this case. *See Diamond*, 285 F.3d at 829. The bankruptcy court's actions throughout the adversary proceedings were entirely consistent with the law of issue preclusion as we have applied it to bankruptcy discharge.

The only remaining question, then, is whether the various doctrines of issue preclusion prevented the bankruptcy court from enforcing its dischargeability determination by including a money judgment in its resolution of the adversary proceeding. They clearly do not. As the Supreme Court has held, affording full faith and credit to a judgment does not [874] require a court to "adopt the practices of [the jurisdiction that granted the judgment] regarding the time, manner, and mechanisms for enforcing judgments." *Baker ex rel. Thomas v. General Motors Corp.*, 522 U.S. 222, 235 (1998). As the Supreme Court explained, "[e]nforcement measures do not travel with the sister state judgment as preclusive effects do; such measures remain subject to the evenhanded control of forum law." *Id.* (citing *McElmoyle ex rel. Bailey v. Cohen*, 13 Pet. 312, 325, 10 L.Ed. 177 (1839) (holding that judgment may be enforced only as "laws [of enforcing forum] may permit") and Restatement (Second) of Conflict of Laws § 99 (1969) ("The local law of the forum determines the methods by which a judgment of another state is enforced.")).

In sum, none of the doctrines of issue preclusion dictate how a bankruptcy court may choose to enforce its determination of nondischargeability. That is a question reserved to the bankruptcy courts in the exercise of their broad equitable powers in bankruptcy. In so doing, as we have discussed, bankruptcy courts are authorized by statute to issue "any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 28 U.S.C. § 105. In addition, the bankruptcy court may use its inherent equitable power to fashion relief, so long as the remedy is consistent with the objectives of the Bankruptcy Code. *In re Saxman*, 325 F.3d at 1174. Thus, as a matter of law, a prior judgment does not preclude a bankruptcy court from exercising its power to determine how best to enforce its own dischargeability order.

The bankruptcy court here, therefore, had the authority to enter a money judgment in conjunction with its nondischargeability order. "It does not follow, however, that the court was bound to exercise its authority. And it probably would not and should not have done so except under unusual circumstances such as here exist." *Hunt*, 292 U.S. at 241. The existence of a prior judgment may introduce some prudential concerns, such as comity, that a bankruptcy court should take into consideration in fashioning relief. *See Smith v. Lachter (In re Smith)*, 242 B.R. 694 (B.A.P. 9th Cir. 1999) (noting that the filing of a new money judgment is not necessary when there is an existing effective state court judgment); *Gertsch v. Johnson & Johnson Fin. Corp. (In re Gertsch)*, 237 B.R. 160 (B.A.P. 9th Cir. 1999) (discussing the potential confusion and complication caused by the entry of multiple judgments).[5] Although important considerations,

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[5] We interpret *Smith* and *Gertsch* as involving prudential considerations. To the extent that these cases may be construed as holding that bankruptcy courts have no jurisdiction or authority to enter a money judgment on a liquidated claim, we must respectfully disagree. We also disagree with the approach taken by the Fourth Circuit in *Heckert v. Dotson (In re Heckert)*, 272 F.3d 253, 257 (4th Cir. 2001). In our opinion,

these prudential concerns do not affect the jurisdiction and the power of the bankruptcy court to enter a new money judgment as part of declaring a debt nondischargeable.[6] [875] Rather, these prudential issues are best committed to the judgment of the bankruptcy court, subject to review for abuse of discretion. *In re Myrvang*, 232 F.3d at 1121. In examining prudential considerations, we must also remember that "[t]he Supreme Court found that the overriding purpose of § 523 is to protect victims of fraud." *Muegler v. Bening*, 413 F.3d 980, 983 (9th Cir. 2005) (citing *Cohen v. de la Cruz*, 523 U.S. 213, 222-23 (1998)). Thus, a bankruptcy court does not act outside the purposes of the Bankruptcy Code by providing victims of fraud an additional means of enforcing a nondischargeability judgment in an appropriate case.

Applying these principles to the case at hand, we conclude that the bankruptcy court acted well within its discretion in entering the new money judgment. Several circumstances rendered the bankruptcy court's entry of a new money judgment necessary and appropriate. The creditor obtained a state court judgment, which proved uncollectible at the time. When the creditor commenced further collection proceedings, the debtor filed bankruptcy. Based on the debtor's post-state judgment behavior, the bankruptcy court concluded that the debt was nondischargeable because the debtor had engaged in fraud. The court entered a money judgment as part of the judgment of nondischargeability. The debtor did not object, but waited until the creditor had allowed the state court judgment to lapse in favor of the dis-

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Heckert did not give sufficient consideration and deference to bankruptcy court's broad equitable powers to fashion relief.

[6] Many of the prudential considerations involved in the entry of multiple judgments can be addressed in the original state forum. For example, in California, the rule as to multiple judgments is that, if a party receives multiple judgments on a single claim, that party can have just one satisfaction. *See Textron Financial Corp. v. National Union Fire Ins. Co. of Pittsburgh*, 118 Cal. App. 4th 1061, 1078 (Cal. Ct. App. 2004); *McCall v. Four Star Music Co.*, 51 Cal. App. 4th 1394, 1398 (Cal. Ct. App. 1996).

charge judgment. When the discharge judgment was renewed, the debtor then sought to prevent the bankruptcy court from issuing an enforcement order that would give effect to the prior state judgment, arguing that the lapsed state court judgment precluded it. However, as the BAP found, the debtor had engaged in "wilful and malicious behavior" in rendering the initial state court judgment uncollectible. The debtor in this case is clearly attempting to manipulate both the federal and state court systems to avoid paying the debt, which the bankruptcy court has found nondischargeable. Given the history of the case, the bankruptcy court's action in entering a new money judgment and renewing the judgment was entirely proper.

Sasson would turn the law of preclusion on its head by having us hold that the existence of a lapsed underlying state court judgment precludes enforcement of that judgment in federal court. He would have us hold that we can only uphold a creditor's right to full faith and credit of a state court judgment by denying the creditor the right to enforce the judgment. In this context, the doctrines of full faith and credit, collateral estoppel, and res judicata do not apply to prevent a bankruptcy court from entering a money judgment when ruling on the dischargeability of the underlying debt in the exercise of its equitable power.

III

For all of these reasons, we conclude that the court did not err in declining to award relief pursuant to Rule 60(b)(4). Under Federal Rule of Civil Procedure 60(b), a court may relieve a party from judgment for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence; (3) fraud or other misconduct; (4) avoid judgment; (5) a satisfied or discharged judgment; or (6) any other reason justifying relief from operation of judgment. Sasson contends that he is entitled to relief because the judgment entered by the bankruptcy court was void. A "'judgment is not void merely because it is erroneous.'" *Ministry of Def. & Support for the Armed Forces v. Cubic Def. Sys.*, 385 [876] F.3d 1206, 1225 (9th Cir. 2004)

(quoting *United States v. Holtzman*, 762 F.2d 720, 724 (9th Cir. 1985)), petition for cert. filed, 73 U.S.L.W. 3498 (Feb. 11, 2005). We have consistently held that a "final judgment is 'void' for purposes of Rule 60(b)(4) *only if* the court that considered it lacked jurisdiction, either as to the subject matter of the dispute or over the parties to be bound, or acted in a manner inconsistent with due process of law." *United States v. Berke*, 170 F.3d 882, 883 (9th Cir. 1999) (emphasis added); *Cubic Def. Sys.*, 385 F.3d at 1226 ("A judgment is void only if the issuing court lacked subject-matter jurisdiction over the action or if the judgment was otherwise entered in violation of due process."). Given that the bankruptcy court acted well within its jurisdiction and authority in entering the money judgment in the first instance, the judgment was not void. The court was entirely correct in declining to grant relief under Rule 60(b).

AFFIRMED.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 03-16364
BAP No. NC-02-01410-MaMeP
[STAMP: FILED Nov. 10, 2005
Cathy A. Catterson, Clerk
U.S. Court of Appeals]

IN RE ROBERT SASSON, *Debtor.*

ROBERT SASSON, *Appellant,*

v.

NORMAN F. SOKOLOFF, M.D., individually and as Trustee for CAMELOT MEDICAL GROUP, INC., PROFIT SHARING PLAN, *Appellee.*

ORDER

Before: THOMAS, GRABER, and PAEZ, Circuit Judges.

The panel has voted to deny the petition for rehearing and to reject the suggestion for rehearing en banc.

The full court has been advised of the suggestion for rehearing en banc, and no judge of the court has requested a vote on the suggestion for rehearing en banc. Fed. R. App. P. 35(b).

The petition for rehearing is denied and the suggestion for rehearing en banc is rejected.

APPENDIX C

[STAMP: NOT FOR PUBLICATION]

UNITED STATES BANKRUPTCY APPELLATE PANEL OF THE NINTH CIRCUIT

IN RE ROBERT SASSON, *Debtor.*

ROBERT SASSON, *Appellant,*

v.

NORMAN F. SOKOLOFF, M.D., individually and as Trustee for CAMELOT MEDICAL GROUP, INC., PROFIT SHARING PLAN, *Appellees.*

[STAMP: FILED May 27, 2003
Nancy B. Dickerson, Clerk
U.S. Bkcy. App. Panel of the Ninth Circuit]

BAP No. NC-02-01410-MaMeP
Bk. No. 89-52300-JRG
Adv. No. 89-5358

MEMORANDUM[7]

Argued and Submitted February 20, 2003
at San Jose, California
Filed—May 27, 2003
Appeal from the United States Bankruptcy Court for the Northern District of California
Honorable James R. Grube, Bankruptcy Judge, Presiding

Before: MARLAR, MEYERS,[8] and PERRIS, Bankruptcy Judges

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[7] This disposition is not appropriate for publication and may not be cited except when relevant under the doctrines of law of the case, *res judicata*, or collateral estoppel. *See* 9th Cir. BAP Rule 8013-1.

[8] Hon. James W. Meyers, Bankruptcy Judge for the Southern District of California, sitting by designation.

[2] INTRODUCTION

In this appeal, we affirm the validity and preclusive effect of the bankruptcy court's money judgment, which was entered in a nondischargeabilility proceeding, as well as the bankruptcy court's jurisdiction to enforce its judgment.

FACTS

1. The State Court Action[9]

In November 1988, Norman Sokoloff, M.D., individually and as Trustee of the Camelot Medical Group, Inc. Profit Sharing Plan ("Sokoloff"), obtained a $120,000 state court summary judgment against the debtor, Robert Sasson ("Sasson"), for breach of a promissory note. Before Sokoloff could enforce the judgment, Sasson obtained a stay.

As a condition of the stay and to preserve the status quo, Sasson was ordered not to dissipate any assets. However, three days prior to the issuance of the stay, Sasson had placed a deposit on a residence. In January. 1989, while the stay was in force, Sasson closed escrow and encumbered the residence with a first priority lien for $225,000. Then, in February 1989, while the stay was still in effect, Sasson gave his parents a second deed of trust, allegedly to secure a loan in the amount of $28,675.33. He then used those funds to pay creditors other [3] than Sokoloff, including Sasson's attorney.

Sasson also had domestic problems, and a dissolution proceeding was pending at this same time. In violation of the state court stay, in January 1989, Sasson and his wife entered into a stipulation to divide about $435,000 worth of community property, and Sasson transferred approximately one-half of the community property to his wife.[10]

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[9] See the bankruptcy court's Findings of Fact and Conclusions of Law (May 29, 1991).

[10] Under California law, the wife's share was rendered exempt from Sasson's liability for the state court judgment. *See* former Cal. Civ. Code § 5120.160 (Cal. Fam. Code § 916 (West 1994)).

On March 1, 1989, Sasson's post-trial motion was denied, the stay was dissolved, and state court entered a second judgment against him in the sum of $149,489.53[11] plus accruing interest. Sokoloff recorded an abstract of this judgment on April 3, 1989, but did not thereafter renew it, and it eventually lapsed.

2. Sasson's Bankruptcy

On May 15, 1989, Sasson filed a chapter 7[12] petition. His [4] bankruptcy schedules did not disclose the liens related to his residence, nor the chronology of events leading to his acquisition thereof. Instead, Sasson claimed the residence as exempt property.

Sokoloff filed a complaint to determine his judgment debt nondischargeable under § 523(a)(6)[13] and to deny Sasson his discharge pursuant to § 727(a)(2).[14]

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[11] This judgment was filed on March 3, 1989. The award included $100,000 on the note, plus $23,368.97 prejudgment interest, costs of $1,020.56, and attorney's fees of $25,000.

The state court also awarded postjudgment interest of 27.39 per day from March 4, 1989 until the judgment was satisfied.

[12] Unless otherwise indicated, chapter and section references are to the Bankruptcy Code, 11 U.S.C. § 101-1330, and rule references are to the Federal Rules of Bankruptcy Procedure ("Fed. R. Bankr. P.") or to the Federal Rules of Civil Procedure (Fed. R. Civ. P.") incorporated therein.

[13] Count Seven of the complaint stated, in pertinent part:

> In order to avoid paying the amount due by reason of said loan and the judgment obtained thereon, and in violation of an order of the Superior Court of the State of California, and in order to hinder, delay and defraud Plaintiff, Plaintiff is informed and believes and thereupon alleges that Defendant willfully and maliciously transferred or removed, or permitted the transfer and removal, of his property, thereby willfully and maliciously injuring Plaintiff and the property of Plaintiff. Consequently, Defendant is indebted, to Plaintiff in the amount of said judgment, and such debt should be declared to be a nondischargeable debt as provided in 11 U.S.C. § 523.

Complaint (Sept. 11, 1989), at 8.

The bankruptcy court found that by transferring and encumbering his assets in violation of the state court stay, Sasson had effectively changed an otherwise collectible [5] judgment, absent the stay, into an uncollectible claim. The court determined that these acts constituted a willful and malicious injury under § 523(a)(6), and entered judgment for $148,142.46, plus costs of $1,020.56 and accruing interest. "1991 Judgment").

Although Sasson appealed the 1991 Judgment, he voluntarily dismissed the appeal, and the 1991 Judgment became final. In he 1990s, Sokoloff utilized various collection procedures in bankruptcy court, but apparently was unsuccessful in collecting the judgment. Sokoloff renewed the 1991 Judgment on April 19, 2001, and recorded an Abstract of Judgment in the amount of $239,160.42 with the Santa Clara County Recorder, on July 9, 2001.[15]

Sasson's bankruptcy case was administratively closed in due course.

3. Sasson's Motion to Vacate 1991 Judgment—Rule 60(b)

In April 2002, Sasson motion to reopen his bankruptcy case so that he could attempt to vacate the 1991 Judgment and quash "certain post-judgment processes," presumably

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[14] The bankruptcy court subsequently resolved the § 727(a)(2) claim in Sasson's favor, finding that Sokoloff failed to establish that Sasson had transferred the assets with actual intent to hinder, delay or defraud creditors. 11 U.S.C. 727(a)(2).

In 1991, the "willful and malicious" standard of § 523(a)(6) did not require subjective intent to injure, as it does now. *See Kawaauhau v. Geiger*, 523 U.S. 57, 61 (1998). Therefore, the court could, without legal inconsistency, find Sasson's conduct to be "willful and malicious" under § 523(a)(6) yet not find "actual intent" to hinder, delay, or defraud Sokoloff under § 727(a) (2).

[15] A space was provided for the renewal of judgment in Sasson's excerpts of record, although it was omitted. Nevertheless, it is undisputed that the renewal was obtained because the Abstract of Judgment, which was provided, refers to he April 19, 2001 renewal of judgment.

Sokoloff's ongoing collection activities. Sasson moved pursuant to Fed. R. Civ. P. 60(b), incorporated by Fed. R. Bankr. P. 9024 ("Rule 60(b)"). [6] Presumably moving under Rule 60(b)(4),[16] he contended that the money judgment portion of the 1991 Judgment and the subsequent collection activities were void for lack of subject matter jurisdiction.

At a hearing on the Rule 60(b) motion, Sasson argued that it was unlawful to have both state and federal judgments arising from the same transaction. The bankruptcy court then explained that the 1991 Judgment was a separate federal judgment. The bankruptcy court further explained that, in 1991, it had given the state court judgment res judicata effect only to "fix[] the amount of the claim . . ." Tr. of Proceedings (June 27, 2002), at 1. The bankruptcy court concluded, in disposing of the Rule 60(b) motion, that the 1991 Judgment was being enforced properly in bankruptcy court pursuant to Fed. R. Civ. P. 69, incorporated by Fed. R. Bankr. P. 7069 ("Rule 69").

The court's order denying Sasson's Rule 60(b) motion was entered on July 31, 2002, and Sasson timely appealed the order.

ISSUES

1. Whether the bankruptcy court had jurisdiction to enter a money judgment in the 1991 nondischargeability [7] proceeding.

2. Whether the 1991 Judgment was otherwise void.

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[16] Rule 60(b) provides, in pertinent part:

> On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: . . . (4) the judgment is void; . . . The motion shall be made within a reasonable time . . . .

Fed. R. Civ. P. 60 (b)

3. Whether the bankruptcy court had jurisdiction to entertain enforcement proceedings of its 1991 Judgment. years after the bankruptcy case was closed.

STANDARDS OF REVIEW

The bankruptcy court's subject matter jurisdiction is a question of law, reviewed de novo. *See Ferm v. UST (In re Crowe)*, 243 B.R. 43, 47 (9th Cir. BAP), *aff'd mem.*, 246 F.3d 673 (9th Cir. 2000). Similarly, we review de novo the bankruptcy court's interpretation of the Bankruptcy Code and Rules. *Temecula v. LPM Corp. (In re LPM Corp.)*, 300 F.3d 1134, 1136 (9th Cir. 2002).

While a bankruptcy court's decision on a Rule 60(b) motion is generally reviewed for an abuse of discretion, *Wilson v. City of San Jose*, 111 F.3d 688, 691 (9th Cir. 1997), a denial of a Rule 60(b)(4) motion, which seeks to set aside a judgment as void, is a question of law reviewed de novo. *See Virtual Vision, Inc. v. Praegitzer Indus., Inc.*, 124 F.3d 1140, 1143 (9th Cir. 1997); *Cossio v. Cate (In re Cossio)*, 163 B.R. 150, 154 (9th Cir. BAP 1994), *aff'd mem.*, 56 F.3d 70 (9th Cir. 1995).

[8] DISCUSSION

A. THE BANKRUPTCY COURT'S JURISDICTION TO ENTER A MONEY JUDGMENT IN 1991

Sasson contends that the bankruptcy court lacked subject matter jurisdiction to enter the 1991 Judgment because the state court had already adjudicated the debt. Because nondischargeability is a core matter pursuant to 28 U.S.C. § 157(b)(2)(I), we need address only the aspect of whether the bankruptcy court had jurisdiction to enter the monetary portion of the judgment.

In the Ninth Circuit, a bankruptcy court has the authority to enter a money judgment as part of its exclusive jurisdiction to determine the dischargeability of debts. *See Cowen v. Kennedy (In re Kennedy)*, 108 F.3d 1015, 1016 (9th Cir. 1997). There, the Ninth Circuit stated:

> If it is acknowledged as beyond question that a complaint to determine dischargeability of a debt is exclusively within the equitable jurisdiction of the bankruptcy court, then it must follow that the bankruptcy court may also render a money judgment in an amount certain without the assistance of a jury. This is true not merely because equitable jurisdiction attaches to the entire cause of action but more importantly because it is impossible to separate the determination of dischargeability function from the function of fixing the amount of the non-dischargeable debt.

Id. at 1017-18 (quoting *Snyder v. Devitt (In re Devitt)*, 126 B.R. 212, 215 (Bankr. D. Md. 1991)).

In *Kennedy*, the creditor's claim was unliquidated. Sasson argues, therefore, that a bankruptcy court's authority to enter a money judgment is limited to situations where the claim has [9] *not* already been liquidated in state court.

While the Bankruptcy Code does not require a debt to have been reduced to a prepetition judgment in order for a bankruptcy court to determine whether it is nondischargeable, *Banks v. Gill Distrib. Cents., Inc. (In re Banks)*, 263 F.3d 862, 868 (9th Cir. 2001), when a party's liability and the resultant damages have previously been reduced to judgment in another court, such judgment must be given full faith and credit. *See* 28 U.S.C. § 1738 (Full Faith and Credit statute). Generally, a federal court is precluded from entering a new monetary judgment based on a cause of action that has already been fully litigated in a California state court.[17]

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[17] Once a liquidated debt is determined to be nondischargeable, then the state court judgment, which is a complete adjudication of the debtor's liability for, including the amount of, such debt, is given res judicata effect. *See Cohen v. de la Cruz*, 523 U.S. 213, 218 (1998) (stating that damages recoverable under applicable state law are nondischargeable debt under § 523(a)(2)); *Roussos v. Michaelides (In re Roussos)*, 251 B.R. 86, 93-94 (9th Cir. BAP 2000), *aff'd*, 33 Fed. Appx. 365 (9th Cir. 2002) (final state court judgment was res judicata on amount of nondischargeable debt). *Cf. Comer v. Comer (In re Comer)*, 27 B.R. 1018, 1021 (9th Cir. BAP 1983),

Smith v. Lachter (In re Smith), 242 .R. 694, 703-04 (9th Cir. BAP 1999).

[10] Sasson relies for support on *Gertsch v. Johnson & Johnson Fin. Corp. (In re Gertsch)*, 237 B.R. 160 (9th Cir. BAP 1999). In *Gertsch*, lender Johnson & Johnson Finance Corp. ("JJFC") obtained a prepetition state court judgment against Dr. Gertsch for breach of contract. When Dr. Gertsch filed for bankruptcy, JJFC sought a declaration that the entire debt was nondischargeable under § 523(a)(2)(B) (fraudulent financial statement), and also prayed for the court to find Dr. Gertsch liable for damages. *Id.* at 164. The bankruptcy court granted summary judgment in favor of JJFC.[18] It then entered a money judgment against Dr.

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aff'd, 723 F.2d 737 (9th Cir. 1984) ("As a general proposition, bankruptcy courts are *not* free to disregard the prior judgments of other state and federal tribunals where the doctrines of res judicata or collateral estoppel would otherwise apply.") (emphasis added).

Here, the bankruptcy court was not asked to apply collateral estoppel to the state court's factual findings, because the breach of contract judgment was indisputedly dischargeable debt. Instead, the court was asked to find the judgment debt nondischargeable based on Sasson's post-judgment conduct, which was "willful and malicious" and by which he had, by violation of a court order, rendered the debt uncollectible. Thus, the bankruptcy court gave the state court judgment res judicata effect only with regard to the amount of the judgment.

[18] The court thus determined the nondischargeability of the liquidated breach of contract debt by determining its nature. *See Archer v. Warner*, ___ U.S. ___, 123 S. Ct. 1462, 1466 (2003) (holding that claim preclusion did not prevent the bankruptcy court from looking behind a settlement agreement in order to decide whether the debt at issue was one for money obtained by fraud); *Brown v. Felsen*, 442 U.S. 127, 136 (1979) where a stipulation and consent decree settling a collection suit did not mention fraud, the bankruptcy court was not precluded from hearing evidence on the fraud claim); *Banks*, 263 F.3d at 869 ("While an action may seem to be non-fraud-based for state purposes, this does not foreclose a later determination by the bankruptcy court that what occurred was fraudulent and therefore nondischargeable"); *Comer v. Comer (In re Corner)*, 723 F.2d 737, 740 (9th Cir. 1984) (stating that res judicata does not apply to the bankruptcy court's determination of the nature of the debt in a nondischargeability proceeding).

Gertsch, which included the base amount of the state court judgment plus accrued postjudgment interest.

On appeal, the BAP vacated and remanded for a clarification that the bankruptcy court had not entered an independent money judgment, but had merely determined the debt that was already established by the state court to be nondischargeable. *Id.* at 172. The BAP reasoned that two judgments for the same debt was [11] improper, and stated:

> The judgment, prepared by JJFC, should have been more artfully worded to reflect that it was not creating a separate money judgment. The problems are more than merely theoretical. The state court has entered a judgment for $1,157,574.96 according to proof acceptable to it. The bankruptcy court merely accepted that sum and added post-judgment interest through the date of its judgment, entering a judgment for $1,373,867.02. In principle, the judgment debtor could return to the state court for relief from that judgment for reasons permitted by state law, and the state court could reduce the judgment debt. Were such reasons to exist, the separate federal money judgment, *not based upon any independent determination*, adds nothing but confusion. Moreover, it might give the plaintiff a windfall, by rolling post-judgment interest into the principal of the new federal money judgment, on which post-judgment interest runs, transmuting the state court post-judgment simple interest into compound interest. Where the debt at issue has been reduced to judgment, the bankruptcy court's judgment in a nondischargeability action should merely declare the prior judgment nondischargeable (or not) in whole or in part.

Id. at 172 (emphasis added).

The facts of our case merely require a common-sense application of existing law. Unlike *Gertsch*, the court here made an "independent determination" that a *new* claim arose, created by Sasson's prepetition, *postjudgment*, ma-

nipulative conduct. That conduct was willful and malicious under § 523(a)(6). In addition, like *Gertsch*, the *amount*, of the debt that the court then determined to be nondischargeable had already been determined by the state court judgment.[19]

Sasson also relies on *Smith*. In *Smith*, the creditors sought to have their claim, which was a lapsed Arizona state- [12] court judgment for breach of contract, declared nondischargeable under § 523(a)(2)(B). As in *Gertsch*, the bankruptcy court entered a new money judgment in favor of the creditors, which it calculated by taking the Arizona judgment principal amount, adding postjudgment interest at the state law rate, and deducting the debtor's interest payments to date. *Smith*, 242 B.R. at 702. On appeal, the BAP held that the bankruptcy court was barred by the doctrine of res judicata from entering a new money judgment when there was already a fully litigated state court judgment. *Id.* at 703-04.

The *Smith* panel consistently emphasized that there were also prudential reasons for declining to enter a separate federal money judgment where the underlying state court judgment had not been renewed. The BAP stated: "The efficacy of Arizona judgments under these circumstances is a matter better left to the Arizona courts, without the added complication of a parallel federal judgment." *Id.* at 704.

In *Smith*, the claim had previously been reduced to judgment in a proceeding in the Arizona Superior Court. In contrast, here, the underlying claim was Sasson's *postjudgment* tortious conduct consisting of dissipating his assets and rendering the state court judgment uncollectible.

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[19] Federal law governs the dischargeability of debts, but, generally, nonbankruptcy law is applied to determine the existence, amount, and validity of a "claim" in bankruptcy. *See Cohen*, 523 U.S. at 218; *Roussos*, 251 B.R. at 92.

In the instant case, the bankruptcy court clearly had jurisdiction both to enter the 1991 Judgment of nondischargeability and to determine the amount of damages caused by Sasson's postjudgment conduct. Thus, we conclude that the bankruptcy court had complete jurisdiction to enter the 1991 judgment as to both § 523(a)(6) liability and the monetary [13] amount by which Sokoloff was harmed.

B. SASSON'S RULE 60(B)(4) ATTACK ON THE 1991 JUDGMENT

Sasson also maintains that, because the judgment debt had already been liquidated in state court, therefore the separate 1991 Judgment is void and should be vacated. Fed. R. Civ. P. 60(b)(4). In addition to the reasons for rejecting this argument previously set forth, we note this was a direct attack on the 1991 Judgment.[20] See *Watts v. Pinckney*, 752 F.2d 406, 410 (9th Cir. 1985). We conclude, based on the following analysis, that the 1991 Judgment was not void.

A "void" judgment is one "which from its inception was a complete nullity and without legal effect." *Audre, Inc. v. Casey (In re Audre, Inc.)*, 216 B.R. 19, 29 (9th Cir. BAP 1997). Thus, it is commonly acknowledged that a judgment is void if the rendering court lacked subject matter jurisdiction. *Watts*, 752 F.2d at 410; *Owens-Corning Fiberglas Corp. v. Cent. Wholesale, Inc. (In re Cent. Wholesale, Inc.)*, 759 F.2d 1440, 1448 (9th Cir. 1985). Nonetheless, the concept of "voidness" is subject to qualification "in light of every court's jurisdiction to determine its own jurisdiction." *Wetherbee v. Willow Lane, Inc.* [14] (*In re Bestway Prods., Inc.*), 151 B.R. 530, 538 (Bankr. E.D. Cal. 1993), *aff'd mem.*, 165

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[20] Moreover a Rule 60(b)(4) motion is an exception to the collateral attack doctrine to the extent it provides that a void judgment may be set aside at any time. *See United States v. Tittjung*, 235 F.3d 330, 335 (7th Cir. 2000). A Rule 60(b)(4) motion, grounded upon a void judgment, may be brought at any time and is not constrained by the "reasonableness" requirement. *Meadows v. Dom. Rep.*, 817 F.2d 517, 521 (9th Cir. 1987) (citing 11 C. Wright & A. Miller, *Federal Practice and Procedure*, § 2862 (1973) and *Bookout v. Beck*, 354 F.2d 823, 825 (9th Cir. 1965)).

B.R. 339 (9th Cir. BAP 1994). As noted in one prominent treatise:

> [A] court has jurisdiction to determine its own jurisdiction. . . . a court's determination that it has jurisdiction of the subject matter is binding on that issue, if the jurisdictional question actually was litigated and decided, or if a party had an opportunity to contest subject-matter jurisdiction and failed to do so.

11 Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice & Procedure: Civ. 2d* § 2862 (1992).

The Ninth Circuit recognizes that only an egregious jurisdictional error, not mere error, will render a final judgment void. *See Watts*, 752 F.2d at 409 (merely "erroneous" judgment is not void); *Tsafaroff v. Taylor (In re Taylor)*, 884 F.2d 478, 482 (9th Cir. 1989) (stay lift order entered after dismissal of both the bankruptcy case and the adversary proceeding was a "legal nullity"); *Center Wholesale*, 759 F.2d at 448 (to render a judgment void, a due process violation must be constitutional, "not merely statutory").

This policy is rooted in the finality of judgments and the preclusive doctrine of res judicata. *See Stoll v. Gottlieb*, 305 U.S. 165, 171 (1938) (ruling that a federal judgment must be honored even "assuming that the Bankruptcy Court did not have jurisdiction of the subject matter"). "Res judicata" forecloses the "relitigation of matters that have once been litigated and decided." 18 Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, *Federal Practice & Procedure: Juris. 2d*, § 4402, at 7-8 (West Group 2002). "A lack of subject-matter jurisdiction does not of itself depreciate any of the central values of judicial [15] finality." 18A C. Wright et al., *supra*, § 4428, at 10.

In our determination whether a court committed an actionable miscarriage of its jurisdiction, we are guided by the *Restatement (Second) of Judgments*:

> In very limited circumstances a judgment in a contested action may be subsequently attacked for lack

of subject matter jurisdiction. As stated in § 12, it must appear that:

(1) The subject matter of the action was so plainly beyond the court's jurisdiction that its entertaining the action was a manifest abuse of authority; or

(2) Allowing the judgment to stand would substantially infringe the authority of another tribunal or other agency of government; or

(3) The judgment was rendered by a court lacking capability to make an adequately informed determination of a question concerning its own jurisdiction and as a matter of procedural fairness the party seeking to avoid the judgment should have opportunity belatedly to attack the court's subject matter jurisdiction.

Id., § 69, comment (a) (1982).

Here, it is abundantly clear that the bankruptcy court had exclusive jurisdiction over the nondischargeability proceeding, and also had the authority to determine its own jurisdiction. *See Cal., State Bd. of Equalization v. Harleston (In re Harleston)*, 275 B.R. 546, 549 (9th Cir. BAP 2002); *Senoda v. Cabrera*, 189 F.3d 1047, 1050 (9th Cir. 1999) (federal courts have power and duty to examine their own jurisdiction).

Sasson had the opportunity to contest the court's subject matter jurisdiction in the proceeding leading to the entry of the 1991 Judgment. Therefore, any alleged erroneous determination by the bankruptcy court that it had jurisdiction to enter the monetary judgment did not render the 1991 Judgment [16] a nullity, because the bankruptcy court still had general subject matter jurisdiction of the proceeding. *See* 18 Wright et al., *supra*, § 4403 ("courts have repeatedly recognized that res judicata is not defeated by error in the initial judgment"). As a general rule, "a judgment entered by a federal court acting beyond its subject matter jurisdic-

tion remains eligible for res judicata effects if there is no other defect." 18A Wright et al., *supra*, § 4427, at 5.

Because the bankruptcy court had core jurisdiction to determine a § 523(a)(6) challenge to the dischargeability of Sokoloff's debt, its judgment was not "void" merely because of the method by which it calculated damages. It is well established law that "[i]f a second action is pursued to entry f a final judgment inconsistent with a prior judgment, the second judgment ordinarily prevails whether the res judicata effects of the first judgment were ignored by the parties or expressly rejected by the court in the second action." 18 *Wright et al., supra*, § 4404, at 60.

The policy against vacating final judgments for mere error" in the exercise of a court's subject matter jurisdiction was illustrated in *Watts*. In that case, the district court had entered a judgment against an individual defendant even though the claim fell under exclusive admiralty jurisdiction and the remedy was solely against the United States. *Watts*, 752 F.2d at 407. After the district court granted the defendant's motion to vacate the judgment against him, the plaintiff appealed, but the Ninth Circuit affirmed. It distinguished between an "error" in the exercise of jurisdiction which would *not* render a judgment [17] "void" versus "total want of jurisdiction over the claim," which was the case there and which rendered the judgment void for purposes of Rule 60(b)(4). *Id.* at 409.

Another example is *Bestway Prods.*, 151 B.R. at 538, where the bankruptcy court determined that a chapter 7 discharge order, which had been entered in the corporate debtor's previous bankruptcy case should be vacated. The court determined such error to be "egregious" because "no court has the power to grant such a discharge to a corporation under § 727(a)(1), and thus, jurisdiction was completely lacking. *Id.*

Here, even if one accepts Sassons argument that the bankruptcy court may have erred by entering a judgment that it was barred from entering, this fact did not divest the bankruptcy court of its jurisdiction to enter a money judg-

ment in such nondischargeability proceeding. Any perceived error was not so egregious as to render the 1991 Judgment void. The 1991 Judgment was therefore a valid and final judgment and was entitled to res judicata effect. *See Robertson v. Isomedix, Inc. (In re Intl'l Nutronics, Inc.)*, 28 F.3d 965, 969 (9th Cir. 1994) (res judicata requires a valid, final judgment on the merits).

In this respect, Sasson argues that this appeal should be governed by *Heckert v. Dotson (In re Heckert)*, 272 F.3d 253 (4th Cir. 2001), a Fourth Circuit case with similar facts. In *Heckert*, in 1983, the creditor obtained a wrongful termination judgment for $7,000 against the debtor. In 1987, the debtor filed a chapter 7 bankruptcy. In 1988, on the creditor's complaint, the bankruptcy court entered an order which held that [18] the state court judgment was nondischargeable. The bankruptcy court also entered a money judgment for $7,000 plus accrued interest at both the state and federal rate (accruing postpetition). *Heckert*, 272 F.3d at 256.

In 1996, after the state's ten-year period for executing on the state court's 1983 judgment had expired, the creditor attempted to execute on the 1988 federal judgment. As in the case at bar, the debtor in *Heckert* sought the bankruptcy court's protection by reopening the adversary proceeding and filing a motion to vacate the bankruptcy court's judgment as void and to quash the enforcement process. The bankruptcy court denied the motions, and its decision was affirmed by the district court.

The Fourth Circuit, however, reversed, holding that the bankruptcy court had initially exceeded its jurisdiction by entering its own money judgment to replace the state court judgment. *Heckert*, 272 F.3d at 257. The Court of Appeals concluded that such an act was barred by the doctrine of res judicata, because a "federal court, as a matter of full faith and credit, under 28 U.S.C. § 1738, must give a state court judgment the same preclusive effect as the courts of such State' would give." *Heckert*, 272 F.3d at 257. It explained that the bankruptcy court's error consisted both in its *de*

facto extension of the deadline for execution on the judgment from 1993 to 1998 (10 years after the federal judgment) and in allowing the debt to include the federal, rather than the state, interest rate.

We disagree with the result in *Heckert*. The Fourth Circuit did not appear to consider fully authority which would prohibit [19] a collateral attack on an original determination of subject matter jurisdiction, since the facts in *Heckert* concerned a direct attack on an order in a reopened case. *Heckert*, 272 F.3d at 256 (declining to apply *Chicot Co. Drainage Dist. v. Baxter State Bank*, 308 U.S. 371 (1940)).

We do not believe the particular manner of challenge affects the validity of a judgment. A judgment can always be attacked directly; the law also allows a collateral attack when other factors outweigh the policy which traditionally favors finality. 13A Wright et al. *supra*, § 3536. However, the analysis of whether a judgment is void is the same in either type of challenge:

> A judgment is not void merely because it is erroneous. It is void only if the court that rendered it lacked jurisdiction of the subject matter, or of the parties, or if it acted in a manner inconsistent with due process of law.
>
> It must be noted, however, that a court has jurisdiction to determine its own jurisdiction. . . . a court's determination that it has jurisdiction of the subject matter is binding on that issue, if the jurisdictional question actually was litigated and decided, or if a party had an opportunity to contest subject-matter jurisdiction and failed to do so.

11 Wright et al., *supra*, § 2862 (footnotes omitted).

Additionally, although *Heckert* distinguished between direct and collateral attacks, and thus gave the bankruptcy court's judgment no res judicata effect, it nonetheless applied res judicata principles to vacate the bankruptcy court's judgment. It held that the bankruptcy court violated the Full Faith and Credit statute, 28 U.S.C. § 1738, by allowing

relitigation of the underlying claim. *Heckert*, 272 F.3d at 258-60.

The legal authorities, however, maintain that even errors [20] concerning the applicability of res judicata do not prevent the application of the finality doctrine. *See* 18 Wright et al., *supra*, § 4404, at 72. Thus, in the instant case, the 1991 judgment, wherein the bankruptcy court settled damages based upon the amount of the state court judgment, was itself entitled to res judicata effect, and such determination of damages stemming from Sasson's manipulative postjudgment conduct did not render the judgment void.

We therefore conclude that the bankruptcy court's entry of the 1991 monetary judgment, even if one accepts the argument that it was erroneous (which we do not), was not so egregious an error that it rendered the 1991 Judgment void. The bankruptcy court was correct, therefore, in holding that the 1991 Judgment was not subject to vacatur under Rule 60(b)(4).

C. Bankruptcy Court Can Enforce its Judgment

Sasson also maintains that even if the bankruptcy court's judgment was valid, the bankruptcy court lacked jurisdiction to enforce the judgment since the case was closed years ago. Sasson argues that the enforcement proceedings must come within the court's "related to" jurisdiction in order for the court to entertain Sokoloff's collection activities, but that it cannot do so, since there is no longer an estate. *See* 28 U.S.C. § 1334(b).

The bankruptcy court determined that the enforcement of the 1991 Judgment proceeded properly under Rule 69. Rule 69 provides that the

> [21] [p]rocess to enforce a judgment for the payment of money shall be a writ of execution, unless the court directs otherwise. The procedure on execution, in proceedings supplementary to and in aid of a judgment, and in proceedings on and in aid of execution shall be in accordance with the practice

> and procedure of the state in which the district, court is held, existing at the time the remedy is sought, except that any statute of the United States governs to the extent that it is applicable. In aid of the judgment or execution, the judgment creditor or a successor in interest when that interest appears of record, may obtain discovery from any person, including the judgment debtor, in the manner provided in these rules or in the manner provided by the practice of the state in which the district court is held.

Fed. R. Civ. P. 69(a)/Fed. R. Bankr. P. 7069.

Rule 69 is not jurisdictional, but merely incorporates the state law procedures for the enforcement of judgments entered in bankruptcy court. *See generally*, 12 Charles Alan Wright, Arthur R. Miller & Richard L. Marcus, *Federal Practice and Procedure: Civil 2d* § 3011 (1997). Therefore, the only issue before us is whether a judgment can be enforced once the underlying case has been administratively closed.

In our Circuit, we have held that a bankruptcy court has continuing jurisdiction to enforce its orders because such natters are "ancillary" to the judgment.[21] *See Lawson v. Tilem (In re Lawson)*, 156 B.R. 43, 46 (9th Cir. BAP 1993). In *Lawson*, we explained that "[a]ctions are said to be ancillary to the original suit when brought in aid of an execution or to effectuate a judgment entered in the prior suit." *Id.* Thus, given though, in Lawson, the bankruptcy case had been dismissed [22] and there was no longer a bankruptcy estate, we affirmed the bankruptcy court's imposition of a lien to enforce its fee award.[22]

---

[21] Congress codified much of the common-law doctrine of ancillary jurisdiction as part of "supplemental jurisdiction" in 28 U.S.C. § 1367.

[22] We are not bound by the following contrary case authority from other circuits, relied upon by Sasson: *Bass v. Denney (In re Bass)*, 171 F.3d 1016, 1024 (5th Cir. 1999) (collection of a money judgment emanating

Lawson makes sense, regarding dischargeability judgments, from both legal and practical perspectives. Ancillary matters are "in effect a continuance of the original suit." *Jones v. Nat'l Bank of Commerce of El Dorado*, 157 F.2d 214, 215 (8th Cir. 946) (relied upon by *Lawson*). A court having subject matter jurisdiction over the primary lawsuit will also have ancillary jurisdiction over dependent claims or enforcement proceedings subsequent to judgment. *See Peacock v. Thomas*, 516 U.S. 349, 355 (1996) (ancillary jurisdiction extends to claims that are dependent on the primary lawsuit, but there must be an independent basis for federal jurisdiction over the primary lawsuit); *Hamilton v. Nakai*, 453 F.2d 152, 156 (9th Cir. 1971) (a court's subject matter jurisdiction includes the power to enforce its judgment).

Procedurally, Rule 69 governs all judgment enforcement activity during the life of the bankruptcy case so that it "remains under the supervision and control of the bankruptcy [23] court." *Arneson v. Farmers Ins. Exchange (In re Arneson)*, 282 B.R. 883, 893 (9th Cir. BAP 2002). Rule 69 would be meaningless if it did not have application after administrative case dismissal or closure. *See* 12 Wright, Miller & Marcus, *supra*, § 3013 (stating in discussion of Rule 69 that "[t]he federal court has ancillary or supplemental jurisdiction for supplementary proceedings to enforce its judgment.") *See also Menk v. Lapaglia (In re Menk)*, 241 B.R. 896, 905 (9th Cir. BAP 1999) (a bankruptcy court's "arising under" jurisdiction to determine if a debt is excepted from discharge survives the dismissal or closing of the bankruptcy case).

---

from a bankruptcy case did not fall under the court's ancillary jurisdiction because it was a "new and independent action"); *HOC, Inc. v. McAllister (In re McAllister)*, 216 B.R. 957, 965-66 (Bankr. N.D. Ala. 1998) (no jurisdiction to entertain a garnishment brought against a nonparty in a no-asset chapter 7 case); *Edwards v. Sieger (In re Sieger)*, 200 B.R. 636, 639 (Bankr. N.D. Ind. 1996) (bankruptcy court's purpose and, thus, jurisdiction ends with the judgment declaring a debt to be nondischargeable).

Ancillary enforcement jurisdiction is a "creature of necessity." *Peacock*, 516 U.S. at 359. Since there is no uniform body of federal law that deals with how a party can collect upon a federal judgment, Rule 69 simply engrafts a state court's supplementary proceedings into the federal jurisdiction, providing a "fast and effective mechanism[] for execution." *Id.* Thus, state procedures, such as debtors' examinations, garnishment and execution can proceed via the Bankruptcy Clerk's office and the U.S. Marshal in order for a litigant to enforce a federal judgment.

Practically, the enforcement system governed by Rule 69 also makes sense. A party is not required to take a federal judgment through a state court's clerk, sheriff, or judicial bodies. Enforcement stays with the federal court that entered the judgment. Rule 69's application is simple and easy in practice. Fewer technical problems manifest themselves in the enforcement arena, allowing courts familiar with the parties and **[24]** the reasons behind the judgment to more expeditiously deal with the details of a collection or procedural problem.

Therefore, we conclude that the bankruptcy court had ancillary jurisdiction to enforce the 1991 Judgment.

CONCLUSION

The bankruptcy court had jurisdiction to determine its jurisdiction and enter the monetary judgment, and any error in its analysis, or failure to give full faith and credit to the state court judgment, did not render the 1991 Judgment nonfinal or void. The bankruptcy court also had supplemental jurisdiction to enforce the 1991 Judgment through Rule 69 collection proceedings. The order denying Sasson's motion to vacate the 1991 Judgment is therefore AFFIRMED.

U.S. Bankruptcy Appellate Panel
of the Ninth Circuit
125 South Grand Avenue, Pasadena, California 91105
Appeals from Central California (626) 229-7220
Appeals from all other Districts (626) 229-7225

NOTICE OF ENTRY OF JUDGMENT

BAP No. NC-02-1410-MaMeP

RE: ROBERT SASSON

A separate Judgment was entered in this case on 5/27/03.

BILL OF COSTS:

Bankruptcy Rule 8014 provides that costs on appeal shall be taxed by the Clerk of the Bankruptcy Court. Cost bills should be filed with the Clerk of the Bankruptcy Court from which the appeal was taken.

9th Cir. BAP Rule 8014-1

ISSUANCE OF THE MANDATE:

The mandate, a certified copy of the judgment sent to the Clerk of the Bankruptcy Court from which the appeal was taken, will be issued 7 days after the expiration of the time for filing a petition for rehearing unless such a petition is filed or the time is shortened or enlarged by order. See Federal Rule of Appellate Procedure 41.

APPEAL TO COURT OF APPEALS:

An Appeal to the Ninth Circuit Court of Appeals is initiated by filing a notice of appeal with the Clerk of this Panel. The Notice of Appeal should be accompanied by payment of the $105 filing fee and a copy of the order or decision on appeal. Checks may be made payable to the U.S. Court of Appeals for the Ninth Circuit. See Federal Rules of Appellate Procedure 6 and the corresponding Rules of the United States Court of Appeals for the Ninth Circuit for specific time requirements.

CERTIFICATE OF MAILING

The undersigned, deputy clerk of the U.S. Bankruptcy Appellate Panel of the Ninth Circuit, hereby certifies that a copy of the document on which this stamp appears was mailed this date to all parties in interest as designated by the Appellant in the Notice of Appeal.

By: Edwina Clay

Deputy Clerk: May 27, 2003

APPENDIX D

[STAMP: FILED July 09 2002 Clerk
United States Bankruptcy Court
San Jose, California]

UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA
BEFORE THE HONORABLE JAMES R. GRUBE, JUDGE

In Re :	Case No. 89-52300-JRG
ROBERT SASSON,	
Debtor.	
SOKOLOFF,	A. P. No. 89-0358
Plaintiff,	
v.	DEFENDANT'S MOTION for VACATING JUDGMENT
SASSON,	
Defendant.	Thursday, June 27, 2002 San Jose, California

Appearances:

For the Movant: Roberts & Elliott
By: James Roberts, Attorney at Law
10 Almaden Boulevard

Suite 500
San Jose, California 95113
(408) 275-9800

Electronic Court Recorder:	United States Bankruptcy Court Clerk of the Court Liz Armendariz 280 South First Street, Room 3035 San Jose, California 95113 (408) 535-5003
Certified Electronic Transcriber:	Palmer Reporting Services P. O. Box 30727 Stockton, California 95213-0727

Proceedings recorded by digital recording; transcript produced by federally-approved transcription service.

[2] Thursday, June 27, 2002 10:46 o'clock a.m.

PROCEEDINGS

THE: COURT: All right. Let' s take number 4.

THE CLERK: Number 4, Sokoloff versus Sasson.

MR. ROBERTS: Good morning, Your Honor. James Roberts for the movant.

THE COURT: Mr. Roberts, I do not agree with you. The difference is that what we have here is not a state court judgment. I don't think the state court judgment has anything to do with this. There was a state court judgment. The state court judgment was *res judicata* really as to only one thing, I believe, at the time. And that is the amount of the claim.

In other words, the claim could not be higher than that, and nobody could argue that the claim was lower because the judgment fixed the amount of the claim as a general proposition.

But absent a lawsuit brought in this Court, that obligation would have been discharged in the bankruptcy. And the lawsuit in this Court is to determine whether or not the judgment is discharged by the bankruptcy. It is not a related-to judgment; it's an arising-under judgment. It's arising under a specific provision of Title 11.

MR. ROBERTS: I agree with parts of what you're saying, and not with other parts, Your Honor.

THE COURT: Okay.

[3] MR. ROBERTS: Okay. The part—

THE COURT: You're free to disagree.

MR. ROBERTS: The part that I agree with is that the judgment that was rendered was as to the issue of dischargeability. And the dischargeability is as to the existing judgment. There cannot be—

THE COURT: No, it's not as to the existing judgment because, in a dischargeability action, I mean—most of the time it is, but it doesn't have to be—because, at least hypothetically, if you had a judgment in a state court that resulted out of two parts of a transaction or something, and I decided hypothetically, again, that one part was fraudulent and the other part was negligence or something that is dischargeable, then the dischargeability judgment could be different from the state court judgment. It couldn't be more, but it could be less if you had two different kinds of conduct and one was dischargeable and the other was not.

MR. ROBERTS: The reason that that fails, Your Honor, is that results in two judgments, and that is not possible. You cannot have a state court judgment and a federal court judgment arising from the same transaction.

Either—one of two thing happens—either the—federal court has the ability to the charge—to determine the dischargeability as the existing state court judgment, or the state court judgment is merged into the federal judgment.

[4] There is no process to allow for merger of the state court judgment in the federal judgment.

THE COURT: See, I—

MR. ROBERTS: So there's only one possible result because you cannot have two judgments for the same dollar amounts.

THE COURT: My view is that this is a federal judgment, that the state court judgment just doesn't matter. I mean, it has some applicability *res judicata* as to the amount of the claim, for example. Since the Supreme Court decision in *Grogan versus Garner*, I can granted summary judgment on a dischargeability case—

MR. ROBERTS: Yes.

THE COURT: —on a state court judgment. Before the Supreme Court decided that case I could not, because the standard of proof in the state court was preponderance of the evidence, and the standard proof for dischargeability was clear and convincing evidence, so I had to retry everything.

MR. ROBERTS: Well, again,—

THE COURT: And a lot of these cases I try have no state court judgment. I mean, they're just—

MR. ROBERTS: Well, there's a huge difference, that they're—

THE COURT: There's a pending claim.

MR. ROBERTS: As the cases make it a huge distinction, [5] as I'm sure you went through them, if there is no state court judgment the federal court here has the right to liquidate a dollar amount for the transaction.

THE COURT: That's true.

MR. ROBERTS: If there—if there's an existing state court judgment, the only issue is dischargeability of the existing state court judgment.

THE COURT: I—No, I disagree with that—

MR. ROBERTS: Okay.

THE COURT: —under the example I just gave you. If you had somehow in the state court sort of two damage

claims that that judgment covered and one was negligence, part of it was negligence, that would be dischargeable. And if the other part of it was, say, hypothetically fraud, that could be nondischargeable. So I don't think, as a matter of law, the whole state court judgment goes up or down together.

MR. ROBERTS: Okay. Again, Your Honor, the failure of that is it results in two enforceable judgment at the same time, and that is not possible.

THE COURT: No, because a state court judgment, I don't believe, is enforceable.

MR. ROBERTS: And what makes it unenforceable?

THE COURT: The debtor's discharge in bankruptcy.

MR. ROBERTS: "The debtor's discharge in bankruptcy." All right. Well, we can disagree.

[6] THE COURT: In other words, when a debtor gets a discharge, every single state court judgment out there, whatever it is for—well, that's probably too broad. If it's some kind of a judgment for taxes, taxes pass through bankruptcy under 523 automatically. And so that's probably too broad a statement.

But other than some kind of judgment that is automatically nondischargeable, it would be like taxes, or support, or something like that, it would automatically pass through. They're all discharged. If you have a fraud judgment in the state court, if you have a willful and malicious injury in the state court, it's discharged unless I find under 523 that it's not.

MR. ROBERTS: Well, except that that's what happened here, is that the issue was the dischargeability of that judgment.

THE COURT: No. The interest was—was the dischargeability of what underlay that judgment of the debtor's conduct. In other words, the debtor's conduct has to make it nondischargeable.

MR. ROBERTS: Well, actually Your Honor, as you recall, the findings of fact in this case it was a conduct that came after the judgment that resulted in the nondischargeability.

THE COURT: Well, I'm not here to retry it, because—

MR. ROBERTS: But—but—

[7] THE COURT: —that's a final judgment.

MR. ROBERTS: No, but your finding of facts that's in this, case, the one that we've reopened, were that the conduct that resulted in nondischargeability took place after the judgment. That's what the findings of fact were in this matter.

THE COURT: Okay. I don't—

MR. ROBERTS: Because of the fact —

THE COURT: I'm not here to debate that,—

MR. ROBERTS: Okay.

THE COURT: —because that's a final judgment, and it's what—it is what is. You and I disagree about what is.

MR. ROBERTS: Okay.

THE COURT: I think it is a federal judgment. It is enforceable as a federal judgment. Rule 69 says you can use any federal tools that are available to you to enforce that judgment.

You can also use any enforcement tools that exist in the state in which the federal court is located to enforce that judgment. And that's the judgment that's being enforced, my judgment, not the judgment out of state court.

MR. ROBERTS: Well, I understood that part. On that we have no disagreement. They're currently enforcing this judgment.

THE COURT: He's enforcing this judgment. I don't have any authority that this judgment has expired. As far as I [8] know it is still a good judgment and they're free to enforce it.

MR. ROBERTS: Okay.

THE COURT: Okay?

MR. ROBERTS: Thank you.

THE COURT: Thank you very much. For that reason the motion is denied.

MR. ROBERTS: Thank you.

THE COURT: Thank you.

(The hearing concluded at 10:53 a.m.)

State of California)
) SS.
County of San Joaquin)

I, Nancy Palmer, certify that the foregoing is a true and correct transcript, to the best of my ability, of the above pages, of the digital recording provided to me by the United States Bankruptcy Court, Northern District of California, of the proceedings taken on the date and time previously stated in the above matter.

I further certify I am not a party to nor in any way interested in the outcome of this matter.

I am a Certified Electronic Reporter and Transcriber through the American Association of Electronic Reporters and Transcribers, Certificate No. 00121. Palmer Reporting Services is approved by the Administrative Office of the United States Courts to officially prepare transcripts for the U.S. District and Bankruptcy Courts.

/s/_____

Nancy Palmer
Palmer Reporting Services
Dated July 2, 2002

State of California)
) SS.
County of San Joaquin)

I, George Palmer, certify that the foregoing is a true and correct transcript, to the best of my ability, of the above pages, of the digital recording provided to me by the United States Bankruptcy Court, Northern District of California, of the proceedings taken on the date and time previously stated in the above matter.

I am a Certified Electronic Reporter through the American Association of Electronic Reporters and Transcribers, Certificate No. 00222. I further certify I am not a party to nor in any way interested in the outcome of this matter. Palmer Reporting Services is approved by the Administrative Office of the United States Courts to officially prepare transcripts for the U.S. District and Bankruptcy Courts.

/s/_____
George Palmer
Palmer Reporting Services
Dated July 2, 2002

APPENDIX E

[STAMP: FILED 02 JUL 29 PM 2:39
U.S. BANKRUPTCY COURT NORTHERN DIST. OF CA.
SAN JOSE]

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Attorneys for Debtor/Defendant

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

In re	)	
	)	CHAPTER 7
ROBERT SASSON,	)	CASE NO. 89-52300 JRG
	)	(Original number
Debtor.	)	5-89-02300 JRG)
	)	
NORMAN F. SOKOLOFF, M.D., individually and as Trustee for CAMELOT MEDICAL GROUP, INC., PROFIT SHARING PLAN,	)	A.P. NO. 890358
	)	
	)	ORDER DENYING MOTION FOR ORDER VACATING JUDGMENT, ETC.
	)	
Plaintiff,	)	
v.	)	
	)	
ROBERT SASSON,	)	
	)	
Defendant.	)	

The motion of debtor ROBERT SASSON for order vacating judgment, etc. came on regularly for hearing on June 27, 2002. Appearing for the debtor was JAMES K. ROBERTS. There was no appearance by NORMAN F. SOKOLOFF, M.D., individually and as Trustee for CAMELOT MEDICAL GROUP, INC., PROFIT SHARING PLAN.

[2] The papers having been considered, and argument made, good cause appearing,

THE MOTION IS DENIED.

DATED: July 29,2002

/s/

JAMES R. GRUBE

Judge of the Bankruptcy Court

Supreme Court, U.S.
FILED
MAY 15 2006
OFFICE OF THE CLERK

(3)

No. 05-1171

In The Supreme Court of the United States

ROBERT SASSON,

Petitioner,

v.

NORMAN F. SOKOLOFF, M.D., individually and as Trustee for Camelot Medical Group, Inc., Profit Sharing Plan,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a bankruptcy court has subject matter jurisdiction to enter a money judgment when it concludes, in an adversary proceeding, that a debt which has been reduced to judgment in a state court is nondischargeable.

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OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondent, Norman F. Sokoloff, M.D., individually and as Trustee for Camelot Medical Group, Inc., Profit Sharing Plan, hereby opposes the Petition for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.*

OPINIONS BELOW

Respondent adopts and incorporates by reference all opinions and orders below that are set forth in Appendices A-E to the Petition for Writ of Certiorari.

STATEMENT OF THE CASE

On November 18, 1988, Norman F. Sokoloff, M.D., individually and as trustee of Camelot Medical Group, Inc., Profit Sharing Plan, obtained a judgment against Robert Sasson in Santa Clara Superior Court on a cross-complaint for breach of a promissory note. The California Superior Court entered judgment against Sasson for $120,000, plus accrued interest and statutory costs.

Before Sokoloff could enforce the state court judgment, Sasson filed an ex parte motion for reconsideration and obtained a stay of enforcement pending determination

* On April 25, 2006, a Suggestion of Death and Substitution of Party was filed in this Court. Norman F. Sokoloff died on October 29, 2005. Accordingly, it was requested that his representative, Ilene Sokoloff, should be substituted as a party in this matter.

of the motion for reconsideration. The stay was granted subject to the condition that Sasson "not dissipate any assets except in the normal course of business." While the stay was in place and without informing the court of his actions, Sasson dissipated the majority of his assets through dissolution proceedings with his wife, purchase of a new property, creation of encumbrance on that property, and ultimately by payment to other creditors.

On March 3, 1989, the Santa Clara Superior Court denied Sasson's motion for reconsideration and entered a second judgment. An abstract of State Judgment II was recorded in Santa Clara County on April 3, 1989. By this time, however, Sasson had dissipated virtually all of his assets in violation of the state court's stay and State Judgment II was uncollectable.

On May 5, 1989, Sasson filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code, 11 U.S.C. §§ 301, 701-784, in the United States Bankruptcy Court for the Northern District of California. The judgment owed to Sokoloff was listed as entirely uncollectable because of Sasson's wrongful transfers of property while the state court stay was in effect. Sasson's bankruptcy schedule did not mention Sasson's recent transfer of assets.

Sokoloff filed an Adversary Proceeding to determine the nondischargeability of debt under 11 U.S.C. § 523(a)(6) and to deny the discharge under § 727(a)(2). Under 11 U.S.C. § 523(a)(6) of the Bankruptcy Code, any debt "for willful and malicious injury by the debtor to another entity or to the property of another entity" shall not be dischargeable in bankruptcy. Under 11 U.S.C. § 727(a)(2), a debtor may not obtain a discharge if "the debtor, with intent to hinder, delay, or defraud a creditor . . . has

transferred, removed, destroyed, mutilated, or concealed, or has permitted to be transferred, removed, destroyed, mutilated, or concealed . . . property of the debtor, within one year before the date of the filing of the petition." 11 U.S.C. § 727(a)(2).

The bankruptcy court rejected the § 727(a)(2) claim, but found that Sasson's transfer of assets in violation of the state court stay constituted a willful and malicious injury under § 523(a)(6). The court entered a judgment for $148,142.46 plus costs and accruing interest. Sasson filed an appeal of this decision, but later dismissed it. Subsequently, both Sasson's bankruptcy and the adversary proceeding were closed by the bankruptcy court.

Sokoloff continued to pursue collection remedies in bankruptcy court. Sokoloff filed a notice of the judgment lien and recorded an abstract of judgment. Sokoloff then obtained a Writ of Execution to the United States Marshal and instructed the Marshal to levy on Sasson's wages. Sasson filed a claim of exemption, which the court granted in part.

In 2001, Sokoloff renewed the 1991 Judgment. The bankruptcy court issued an Abstract of Judgment for $239,160.42 on July 9, 2001, which was then recorded. Subsequently, the bankruptcy court granted Sasson's ex parte motion to reopen his Chapter 7 proceedings for sixty days. Sasson then filed a motion pursuant to Federal Rule of Civil Procedure 60(b) to vacate the 1991 money judgment and to quash the 2001 abstract of judgment. In his motion, Sasson argued that the bankruptcy court lacked subject matter jurisdiction to enter a new federal money judgment and therefore the renewal of judgment and

abstract of judgment were void ab initio. The bankruptcy court denied the motion after a hearing.

Sasson filed a notice of appeal, which was referred to the Bankruptcy Appellate Panel. The Bankruptcy Appellate Panel affirmed the bankruptcy court's decision, holding that the bankruptcy court had jurisdiction both to enter the 1991 judgment of nondischargeability and to determine the amount of damages caused by Sasson's postjudgment conduct. Sasson appealed to the United States Court of Appeals for the Ninth Circuit, which affirmed the Bankruptcy Appellate Panel's decision.

REASON FOR DENYING THE PETITION FOR A WRIT OF CERTIORARI

THE SUPREME COURT SHOULD DENY THE PETITION FOR A WRIT OF CERTIORARI BECAUSE THE COURT OF APPEALS CORRECTLY FOUND THAT THE BANKRUPTCY COURT HAD JURISDICTION TO ENTER A MONEY JUDGMENT ON A DISPUTED STATE LAW CLAIM IN THE COURSE OF MAKING A DETERMINATION THAT THE CLAIM WAS NONDISCHARGEABLE.

The Petition for a Writ of Certiorari focuses on the issue of whether bankruptcy courts may exercise supplemental jurisdiction pursuant to 28 U.S.C. § 1367. However, this case does not provide an appropriate vehicle for addressing this question because the bankruptcy court had jurisdiction, *independent of supplemental jurisdiction*, to render a monetary judgment in the course of making a determination that a debt was nondischargeable. This falls

within the bankruptcy court's jurisdiction over "civil proceedings arising under title 11, or arising in or related to cases under title 11." 28 U.S.C. § 1334(b).

Indeed, before ever mentioning supplemental jurisdiction, the Court of Appeals explained that it was basing jurisdiction on the power of the bankruptcy court to issue judgments in cases properly before it. The Court of Appeals declared: "[T]he bankruptcy court clearly has the power under the Bankruptcy Code to determine whether a debt is nondischargeable, to 'determine the remaining issues, render judgment, and make all orders necessary for the enforcement thereof,' and to 'issue any order, process, or judgment that is necessary or appropriate in carrying out' the order of nondischargeability." *In re Sasson*, 424 F.3d 864, 868 (9th Cir. 2005).

The Court of Appeals stressed that the bankruptcy court's order fit within the scope of § 1334(b). The Court of Appeals explained: "A bankruptcy court's 'related to' jurisdiction is very broad, 'including nearly every matter directly or indirectly related to the bankruptcy.'" *Id.* In addition, the Court of Appeals stressed that "[i]n addition, bankruptcy courts retain their traditional equitable powers under the Bankruptcy Code." *Id.* at 869.

Thus, without even needing to consider supplemental jurisdiction, the Court of Appeals was able to conclude: "Given the text and history of the Bankruptcy Code and the bankruptcy court's inherent equitable powers, it is clear . . . that bankruptcy courts have jurisdiction and power to enter money judgments in adjudicating nondischargeability adversary proceedings." *Id.* at 870.

Therefore, this case does not provide an appropriate basis for this Court to consider whether bankruptcy courts

may exercise supplemental jurisdiction pursuant to 28 U.S.C. § 1367 because the Court of Appeals found jurisdiction entirely apart from supplemental jurisdiction.

A. The Jurisdiction Of The Bankruptcy Court To Enter A Money Judgment In This Case Was Not Based On Supplemental Jurisdiction.

The key flaw in the Petition for Certiorari is its assumption that the bankruptcy court's jurisdiction was based on supplemental jurisdiction, rather than the bankruptcy court's jurisdiction over "civil proceedings arising under title 11, or arising in or related to cases arising under title 11." 28 U.S.C. § 157(a). The Petition argues:

> "This dispute over the underlying nondischargeable debt does not fall within the 'arising under' or 'arising in' jurisdiction conferred by section 1334. Nor is it included within the 'related to jurisdiction', because such an action runs against the debtor personally, not against the estate. A judgment on such a debt can be enforced only against the debtor himself and those of his assets (such as post bankruptcy earnings) that fall outside the bankruptcy estate." Pet. at 14-15.

This argument is erroneous because Sokoloff had the same rights as any other creditor against Sasson's bankruptcy estate; the fact that Sokoloff's claim was nondischargeable gave him additional rights to look beyond Sasson's bankruptcy discharge to seek collection of his claim. To argue otherwise defies logic; why would a creditor that was defrauded, or the victim of an intentional tort, lose the right to participate in a distribution from the debtor's estate along with other creditors?

The case at bar arrived in the bankruptcy court in the form of an adversary complaint seeking to establish both the underlying claim and a determination that the claim was nondischargeable. The bankruptcy court unquestionably had subject matter jurisdiction over the nondischargeability question under 28 U.S.C. § 157(b)(2)(I), as a "core" matter. The bankruptcy court also had subject jurisdiction over the amount of the claim, under 11 U.S.C. § 157(b)(2)(B) and (O).

Therefore, this case did not require the Court of Appeals to consider, or provide an appropriate vehicle for this Court to decide, whether bankruptcy courts can exercise supplemental jurisdiction. Simply put, if the bankruptcy court here had "related to" jurisdiction to enter the money judgment, analysis of supplemental jurisdiction would not be necessary; any split in the Circuits on that issue would hence be irrelevant. The bankruptcy court did have "related to" jurisdiction because the anticipated outcome of the litigation in the Bankruptcy Court unquestionably altered the rights, obligations, and choices of action of the debtor. It established a claim against him and determined that claim would survive the bankruptcy discharge.

Moreover, it should be noted that the record is devoid of any information on the Sasson's bankruptcy estate; it is unknown if the Trustee administered it, or even if there was a distribution to creditors. But regardless, the litigation was part of the claims resolution process, which is a core purpose of the bankruptcy court and which always effects the "handling and administration" of the estate.

At the very least, this case is not an appropriate vehicle for this Court to decide whether bankruptcy courts

may exercise supplemental jurisdiction because there is no indication from the Court of Appeal's decision that supplemental jurisdiction was in any way necessary for the bankruptcy court's jurisdiction and decision.

The cases relied on by Sasson in attempting to demonstrate a conflict among the Circuits are distinguishable because unlike this case they did not involve jurisdiction that was "related to" the claim before the bankruptcy court. For example, Sasson several times cites to *In re Walker*, 51 F.3d 562 (5th Cir. 1995), as conflicting with the Ninth Circuit's opinion in this case. Pet. at 5, 11, 20. But in fact, the *Walker* court spoke of the bankruptcy courts as having broad jurisdiction to hear claims relating to the bankruptcy matter, exactly the conclusion of the Ninth Circuit. The Fifth Circuit explained: "As several courts have commented, "[t]here are . . . strong . . . arguments to support the position that the 'relate to' and 'arising in' jurisdictional components of § 1334(b) already allow bankruptcy courts to hear, to the extent Congress intended, all supplemental claims that have a logical relationship to an underlying bankruptcy proceeding." 51 F.3d at 573 (citations omitted). At most, the Fifth Circuit's decision in *Walker* stands for the proposition that supplemental jurisdiction cannot be used as an independent basis for bankruptcy court jurisdiction; it does not however contravene the argument that supplemental jurisdiction can be used to effectuate a bankruptcy court's order in a matter that is "related to" a matter properly before it.

Similarly, Sasson points to *In re Bobroff*, 766 F.2d 797 (3rd Cir. 1985), to illustrate the conflict among the Circuits. Pet. at 5, 11. But in *Bobroff*, while the claim was in favor of the debtor, the Third Circuit found that the particular claim was not property of the debtor's bankruptcy estate,

and it therefore could not have any conceivable effect on the bankruptcy estate. It was therefore not "related" to a claim before the bankruptcy court under § 1334(b) and is thus completely different from this case.

Petitioner's reliance on *In re Kubly*, 818 F.3d 643 (7th Cir. 1987), to illustrate a conflict is likewise misplaced. Pet. at 5, 11, 16. In *Kubly*, the matter before the bankruptcy court had absolutely no bearing on either the debtor or the bankruptcy estate; it was a dispute between two non-debtor parties and thus was not "related to" the bankruptcy court's jurisdiction. As the Seventh Circuit explained: "The proceeds belong to the Construction Co., the Bank, or the Department; the Kublys (the Debtors) have not claimed them. The Department did not seek anything of the Kublys; its grievance was with the Construction Co. and the Bank. And the resolution of the Department's dispute with the Bank cannot affect either the Kublys or their other creditors." 818 F.2d at 645.

Simply put, the Ninth Circuit in this case found that the bankruptcy court had jurisdiction because Sokoloff's claim was "related to" Sasson's bankruptcy petition. None of the cases cited by the Petitioner reject jurisdiction in this circumstance and thus this case does not pose a conflict warranting the Court's resolution.

B. The Bankruptcy Court Had Jurisdiction To Enforce A Money Judgment In This Case Pursuant To Its Inherent Equitable Powers.

The Court of Appeals also concluded that the bankruptcy court had inherent powers to enforce the money judgment here. 424 F.3d at 870. This is clearly correct: Once the bankruptcy court entered the money judgment, it

had jurisdiction to enforce that order under the authority of any federal court to vindicate its authority and effectuate its decrees. *See Kokkonen v. Guardian Life Insurance Co. of America,* 511 U.S. 375, 379-80 (1994).

Indeed, if the Court were to accept Sasson's argument in this context, a bankruptcy court would be rendered virtually impotent. It would not have jurisdiction to enter orders to enforce its decrees, and would therefore be unable to remedy violations of the automatic stay, discharge injunction, or contempt.

The bankruptcy court unquestionably had authority to hear Sokoloff's claim against Sasson for the unpaid judgment. Once Sasson filed for bankruptcy, that was the only forum where Sokoloff could seek redress for his claim. After the bankruptcy court found in favor of Sokoloff, surely it had the authority to enforce that judgment as part of its inherent powers without ever needing to invoke supplemental jurisdiction.

CONCLUSION

For these reasons, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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IN THE

Supreme Court of the United States

ROBERT SASSON,

Petitioner,

v.

NORMAN F. SOKOLOFF, M.D., individually and as Trustee for CAMELOT MEDICAL GROUP, INC., PROFIT SHARING PLAN,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

REPLY BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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Petitioner Robert Sasson respectfully submits this reply brief in support of his petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

In the decision below, the Ninth Circuit held that bankruptcy courts can exercise the supplemental jurisdiction granted to district courts by 28 U.S.C. § 1367. *See* Pet. App. 6a ("[T]he bankruptcy court's 'related to' jurisdiction [under 28 U.S.C. § 1334(b)] also includes the district court's supplemental jurisdiction pursuant to 28 U.S.C. §.1367."). In so holding, the Ninth Circuit followed its own prior precedent. *See Montana* v. *Goldin* (*In re Pegasus Gold Corp.*), 394 F.3d 1189, 1194-1195 (9th Cir. 2005).

Respondent does not dispute that the circuits are sharply divided over this issue. As the petition explained, the Second Circuit, like the Ninth Circuit, has held that bankruptcy courts may exercise supplemental jurisdiction under 28 U.S.C. § 1367.[1] The Third, Fifth, Seventh, and Eleventh Circuits have reached the opposite conclusion, holding that the more restrictive grant of jurisdiction to bankruptcy courts in 28 U.S.C. § 1334(b) cannot be expanded by the exercise of supplemental jurisdiction.[2] The lower federal courts are similarly divided. *See* Pet. 12 & n.5. Scholarly commentators have repeatedly remarked on the clear disagreement among the courts on this fundamental question regarding the scope of bankruptcy jurisdiction.[3]

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[1] *See Klein* v. *Civale & Trovato, Inc.* (*In re Lionel Corp.*), 29 F.3d 88, 92 (2d Cir. 1994).

[2] *See Bobroff* v. *Continental Bank* (*In re Bobroff*), 766 F.2d 797, 802 (3d Cir. 1985); *Bass* v. *Denney* (*In re Bass*), 171 F.3d 1016, 1024 (5th Cir. 1999); *Walker* v. *Cadle Co.* (*In re Walker*), 51 F.3d 562, 573 (5th Cir. 1995); *Wisconsin Dep't of Indus., Labor & Human Relations* v. *Marine Bank Monroe* (*In re Kubly*), 818 F.2d 643, 645 (7th Cir. 1987); *Miller* v. *Kemira* (*In re Lemco Gypsum, Inc.*), 910 F.2d 784, 789 (11th Cir. 1990).

[3] *See* Ralph Brubaker, *On the Nature of Federal Bankruptcy Jurisdiction: A General Statutory and Constitutional Theory*, 41 Wm. & Mary L. Rev. 743, 928 (2000); Susan Block-Lieb, *The Case Against Supplemental Jurisdiction: A Constitutional, Statutory and Policy Analysis*, 62 Fordham L. Rev. 721, 756 (1994); *see also* William L. Norton, Jr., 1 *Norton Bankruptcy Law & Practice* 2d § 4:70 (2005).

Nor does respondent question the importance of this issue to the day-to-day administration of bankruptcy cases throughout the country, a point that is underscored by the *amicus* brief in support of certiorari filed by the National Association of Consumer Bankruptcy Attorneys.

Respondent's sole contention is that the Ninth Circuit did not need to reach the issue that it explicitly addressed: whether bankruptcy courts can exercise supplemental jurisdiction under section 1367. Respondent argues that the bankruptcy court's entry of judgment on petitioner's nondischargeable debt could have been sustained on a different ground: that such an action falls within section 1334(b)'s grant of jurisdiction over proceedings "related to" the bankruptcy case, without regard to supplemental jurisdiction under section 1367. Br. in Opp. 4-9.

That contention is simply incorrect. It is well-settled that a matter is "related to" a bankruptcy case within the meaning of section 1334(b) only if it can have an effect on the bankruptcy estate. *See Celotex Corp.* v. *Edwards*, 514 U.S. 300, 308 & n.6 (1995). And a judgment, like the one at issue here, that runs against a debtor personally can have no effect whatsoever on that debtor's bankruptcy estate.

As we explain below, the Bankruptcy Code provides for two separate and distinct proceedings. One is a proceeding to establish a claim against the bankruptcy estate, for the purpose of recovering the creditor's proportional share of the estate's assets. *See* 11 U.S.C. § 502. The second is an action running against an individual debtor personally that seeks to establish by way of declaratory judgment that a particular debt is not discharged in bankruptcy. *See id.* § 523. If a debt is found nondischargeable, the creditor may seek to recover on that debt against the debtor personally, after the bankruptcy, from that debtor's post-bankruptcy assets or income.

The specific question raised here is whether a bankruptcy court hearing an adversary proceeding seeking a declaratory judgment that a particular debt is nondischargeable may *also* exercise jurisdiction over a claim for judgment

against the debtor on the nondischargeable debt itself. Contrary to respondent's contention, the outcome of such a lawsuit can have no conceivable effect on the assets or administration of the bankruptcy estate. It affects only the debtor personally—as courts and commentators that have considered the issue have agreed.[4] And it therefore cannot fall within section 1334(b)'s grant of "related to" jurisdiction.

Rather, the only possible basis for jurisdiction over such nondischargeable debts is the basis on which the Ninth Circuit expressly relied: *supplemental* jurisdiction under section 1367 over matters that share a factual nexus with the issues to be determined in the nondischargeability proceeding. *See* Brubaker, 41 Wm. & Mary L. Rev. at 918 (noting that courts that have found jurisdiction to enter judgment on nondischargeable debts have "quite conspicuously" employed a "supplemental [jurisdiction] approach"). The question posed in the petition—whose certworthiness is not disputed—is thus squarely presented here.

I. THE ENTRY OF JUDGMENT ON A NONDISCHARGEABLE DEBT IS NOT WITHIN THE "RELATED TO" JURISDICTION UNDER SECTION 1334

Section 1334(b) of title 28 grants district courts "original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to a case under title 11." 28 U.S.C. § 1334(b). Section 157(a) in turn permits district courts to refer "any or all proceedings arising under title 11 or arising in or related to a case under title 11" to the bankruptcy judges for that district. *Id.* § 157(a).[5]

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[4] *See, e.g., First Omni Bank* v. *Thrall* (*In re Thrall*), 196 B.R. 959, 969 (Bankr. D. Colo. 1996) ("[a]n award of damages in favor of the creditor and against the debtor has no effect on the handling of the estate or its administration" and is outside the "related to" jurisdiction); Brubaker, 41 Wm. & Mary L. Rev. at 916 (2000) (under the governing standard for "related to" jurisdiction, there is "no federal bankruptcy jurisdiction to enter a money judgment against an individual debtor on a nondischargeable debt"); Pet. 15 n.6 (citing cases).

[5] Absent the parties' express consent, bankruptcy courts are permitted to enter final judgment only on matters "arising under" the Bankruptcy Code or "arising in" a bankruptcy case, *see* 28 U.S.C. § 157(b)—the

This Court has made clear that "related to" jurisdiction in bankruptcy extends only to matters whose resolution can have some effect on the bankruptcy estate. *See Celotex*, 514 U.S. at 308 & n.6. As the leading court of appeals case on the question has explained, "[A] civil proceeding is related to bankruptcy [if] *the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy*. . . . An action is related to bankruptcy if the outcome could alter the debtor's rights, liabilities, options, or freedom of action . . . and . . . *in any way impacts upon the handling and administration of the bankrupt estate*." *Pacor, Inc.* v. *Higgins*, 743 F.2d 984, 994 (3d Cir. 1984) (second emphasis added).

By definition, the entry of judgment against a debtor on a nondischargeable debt can have no effect on the bankruptcy estate. Such a judgment can be enforced only against the debtor's post-bankruptcy assets, which are outside the estate in bankruptcy, *see* 11 U.S.C. § 541, and thus cannot diminish the estate's assets or affect its administration.

Respondent's contrary argument is based entirely on the erroneous premise that his complaint seeking a judgment against the debtor personally amounted to the filing of a "claim" against the bankruptcy estate. Br. in Opp. 6-7. It did not. The procedure for asserting a claim against the *estate* is entirely distinct from the procedures for determining nondischargeability of a debt and for obtaining a judgment against the *debtor personally* on that nondischargeable debt. As one court has explained, Congress "separated the determination of dischargeability of a debt from the allowance of a claim. The Code gives creditors two separate and distinct causes of action. Neither determination affects the other." *Thrall*, 169 B.R. at 966.

"core" matters that may constitutionally be adjudicated by a non-Article III tribunal pursuant to *Northern Pipeline Construction Co.* v. *Marathon Pipe Line Co.*, 458 U.S. 50 (1982). As explained in the amicus brief of Professor G. Eric Brunstad, Jr., a reading of the jurisdictional statute that permits a non-Article III bankruptcy court to enter final judgment on a nondischargeable debt arising under state law thus raises substantial constitutional concerns.

1. *The claims allowance process.* The filing of a bankruptcy petition creates a new legal entity known as the "bankruptcy estate." Congress has specifically prescribed the universe of property that is held by that "estate" and is administered by the bankruptcy trustee for the benefit of creditors. *See* 11 U.S.C. § 541. In an individual chapter 7 bankruptcy such as the one here, the estate consists of all the creditor's assets as of the filing of the petition, save for assets that are "exempt" from the reach of creditors. *See id.* § 522; *Rousey* v. *Jacoway*, 544 U.S. 320, 325-326 (2005). Exempt property and any earnings of an individual chapter 7 debtor after the bankruptcy filing are outside the estate and generally cannot be reached by pre-bankruptcy creditors.

The Bankruptcy Code provides specific procedures for distributing the estate's assets among creditors. In order to receive a distribution from the estate, a creditor must file a proof of claim against the estate. *See* 11 U.S.C. § 501. The claim is then "deemed allowed" unless an objection to the claim is filed. *Id.* § 502(a). In that case, the court may hold a hearing to determine whether to "allow" the claim, and if so, in what amount. *See id.* § 502(b). Even when a claim is contested, however, the claims allowance process is generally a summary proceeding, not a full-blown lawsuit. *See Katchen* v. *Landy*, 382 U.S. 323, 329 (1966). If the claim is "allowed," the creditor does not obtain a judgment that runs against the debtor, but merely a determination that he is entitled to a *pro rata* share of the estate's assets, based on that allowed claim. *See* 11 U.S.C. §§ 726, 1129, 1322.

At the end of the bankruptcy process, the debtor typically emerges from bankruptcy and receives a discharge of all his pre-bankruptcy debts. *See* 11 U.S.C. §§ 727, 1141, 1328(b). The discharge "operates as an injunction" against any action a creditor might take to collect the discharged debt. *Id.* § 524. It thereby serves the central purpose of bankruptcy, to provide individual debtors with a fresh start, unencumbered by pre-bankruptcy debt. *See, e.g., Grogan* v. *Garner*, 498 U.S. 279, 286-287 (1991).

2. *Nondischargeability proceedings.* Separate and apart from the procedures for obtaining a distribution from

the *estate*, the Bankruptcy Code sets out a procedure by which a creditor may obtain a determination that a particular debt is nondischargeable, and thus may continue to be enforced against an individual *debtor personally*, even after the bankruptcy. Section 523 of the Bankruptcy Code enumerates several categories of debts that are nondischargeable, including, as specifically applicable here, debts "for willful and malicious injury by the debtor to another entity." 11 U.S.C. § 523(a)(6).

A creditor seeking a determination of nondischargeability must initiate an "adversary proceeding," in which the creditor must prove that the debt falls within one of the categories of nondischargeable debt enumerated in section 523. *See* Fed. R. Bankr. P. 4007. Such an adversary proceeding—unlike the summary process for the "allowance" of claims—is initiated by a complaint, *see* Fed. R. Bankr. P. 7003, and, as a procedural matter, is essentially equivalent to a non-bankruptcy civil action. If the creditor prevails, he obtains a judgment declaring the debt nondischargeable.

Such a nondischargeability determination is not itself a judgment against the debtor entitling the creditor to recover on the nondischargeable debt. *See Brown* v. *Felsen*, 442 U.S. 127, 134-135 (1979) (explaining that the issues presented in a state court action on a debt are quite different from those presented in a nondischargeability proceeding); *Resolution Trust Corp.* v. *McKendry* (*In re McKendry*), 40 F.3d 331, 335 (10th Cir. 1994). But as part of a complaint seeking a determination that a debt is nondischargeable, creditors often, as here, also assert a separate claim asking the bankruptcy court to enter a judgment on the underlying debt—typically a debt arising under state law. The question whether a bankruptcy court may exercise jurisdiction over that separate claim for judgment on the nondischargeable debt turns on whether the court may exercise supplemental jurisdiction.

Contrary to respondent's contentions, a claim seeking a judgment on a nondischargeable debt is in no way "part of the claims resolution process." Br. in Opp. 7. A creditor who files a nondischargeability action also has a separate right to

seek a distribution from the estate. But, as explained above, the way to obtain such a distribution is to file a proof of claim against the *estate*—not to bring an action seeking judgment against the *debtor personally*. While an allowed claim permits the creditor his *pro rata* share of the estate, the *only* effect of a judgment on a nondischargeable debt is to facilitate the creditor's ability to recover against the debtor personally, after the bankruptcy, from assets that are outside the bankruptcy estate. *See, e.g., Thrall*, 196 B.R. at 969 (explaining that a judgment against the debtor on a nondischargeable debt "is significant only after the bankruptcy process is concluded. The damage claim impacts the bankruptcy process only to the extent it is allowed under § 502").

The entry of judgment on a nondischargeable debt, by definition, can thus have no effect on the bankruptcy estate.[6] And because it cannot affect the estate, an action seeking judgment on a nondischargeable debt is not within section 1334(b)'s grant of jurisdiction over matters "related to" the bankruptcy case. Accordingly, and contrary to respondent's contentions, the Ninth Circuit's judgment cannot rest on "related to" jurisdiction, but can only be understood as resting on the premise that bankruptcy courts can exercise supplemental jurisdiction under section 1367.

II. THE NINTH CIRCUIT'S DECISION CANNOT BE RECONCILED WITH DECISIONS OF THE THIRD, FIFTH, SEVENTH, AND ELEVENTH CIRCUITS

The Ninth Circuit did not suggest that the entry of judgment against petitioner on his nondischargeable debt would have any effect on the bankruptcy estate—the governing test for "related to" jurisdiction. Rather, the court expressly relied on the rationale that the "related to" juris-

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[6] Courts and commentators that have expressly considered whether judgment on a nondischargeable debt can affect the bankruptcy estate have agreed that it cannot. *See* Brubaker, 41 Wm. & Mary L. Rev. at 914-916; Alan M. Ahart, *Enforcing Nondischargeable Money Judgments: The Bankruptcy Courts' Dubious Jurisdiction*, 74 Am. Bankr. L.J. 115, 118-119 (2000); Pet. 15 & n.6 (citing cases). Respondent cites no authority to the contrary.

diction also "includes" supplemental jurisdiction under section 1367. Pet. App. 6a. That is, the Ninth Circuit believed that because an action seeking a determination of nondischargeability involves some of the same factual questions as an action seeking judgment on the underlying nondischargeable debt, the latter proceeding is within section 1367's grant of jurisdiction over "all other claims that are so related to claims in the action . . . that they form part of the same case or controversy." *Id.* (quoting 28 U.S.C. § 1367).[7]

Like the Ninth Circuit, the Second Circuit has expressly held that bankruptcy courts may exercise supplemental jurisdiction under section 1367. *See In re Lionel Corp.*, 29 F.3d at 92. Similarly, in concluding that bankruptcy courts have jurisdiction to enter judgment on nondischargeable debts, the Fourth, Sixth, and Eighth Circuits have invoked a supplemental jurisdiction rationale, reasoning that the underlying debt shares a factual nexus with the question of the debt's nondischargeability. *See Longo* v. *McLaren* (*In re McLaren*), 3 F.3d 958, 966 (6th Cir. 1993); *Abramowitz* v. *Palmer*, 999 F.2d 1274, 1279 (8th Cir. 1993); *Hall* v. *Davenport*, 76 F.3d 372, 1996 WL 34674 at *2 (4th Cir. 1996) (unpublished); *see also* Brubaker, 41 Wm. & Mary L. Rev. at 918; Pet. 15 & n.7.

By contrast, the Third, Fifth, Seventh, and Eleventh Circuits have expressly rejected the contention that section 1334 permits the exercise of supplemental jurisdiction over matters that share a factual nexus with bankruptcy proceedings, yet can have no effect on the estate. As the Fifth Circuit explained, "Congress has gone to great lengths to determine what proceedings may be tried by bankruptcy courts, and 'the exercise of ancillary and pendent jurisdiction by bankruptcy courts could subsume the more restrictive "relate[d] to" and "arising in" jurisdiction, such that the lat-

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[7] That reasoning echoes the Ninth Circuit's prior decision in *Couven* v. *Kennedy* (*In re Kennedy*), 108 F.3d 1015 (9th Cir. 1997), which found jurisdiction over a claim seeking judgment on a nondischargeable debt because "it is impossible to separate the determination of dischargeability function from the function of fixing the amount of the non-dischargeable debt." *Id.* at 1018.

ter would be rendered substantially, if not entirely, superfluous.'" *Walker*, 51 F.3d at 573 (citations omitted).[8]

Similarly, the Third Circuit has held that "the mere fact that there may be common issues of fact between a civil proceeding and a controversy involving the bankruptcy estate does not bring the matter within the scope of" bankruptcy jurisdiction. *Bobroff*, 766 F.2d at 802 (citation omitted). Rejecting the position later adopted by the Ninth Circuit in this case, the Third Circuit specifically held that "related to" jurisdiction under section 1334(b) does *not* "mirror the principle of pendent jurisdiction." *Id.*; *accord Torkelsen* v. *Maggio* (*In re Guild & Gallery Plus, Inc.*), 72 F.3d 1171, 1181 (3d Cir. 1996). The Seventh and Eleventh Circuits have reached the same conclusion. *See Kubly*, 818 F.2d at 645; *Lemco Gypsum*, 910 F.2d at 789; Pet. 5 n.1.

Respondent's only effort to reconcile the Ninth Circuit's decision below with the contrary holdings of these other courts of appeals is to claim that, in this case, the bankruptcy court had "related to" jurisdiction over the nondischargeable debt. As demonstrated above, however, that argument rests on a mistaken premise; because the entry of judgment on a nondischargeable debt cannot affect the bankruptcy estate, it is outside the "related to" jurisdiction.

To the extent that respondent's "inherent powers" argument (Br. in Opp. 9-10) is intended to make a distinct point, it is equally unavailing. As this Court has observed, "[t]he jurisdiction of the bankruptcy courts, like that of other

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[8] Respondent argues that "*Walker* . . . spoke of the bankruptcy courts as having broad jurisdiction to hear claims relating to the bankruptcy matter, exactly the conclusion of the Ninth Circuit." Br. in Opp. 8. But, as demonstrated above, the nondischargeable debt at issue here did *not* "relate to" the bankruptcy, because it did not affect the bankruptcy estate. *Walker* expressly endorsed the governing test for "related to" jurisdiction, under which a matter is "related to" the bankruptcy *only* if its resolution could affect the estate. *See* 51 F.3d at 569. And it could not have been clearer in rejecting the notion — adopted by the Ninth Circuit here—that the bankruptcy court's section 1334 jurisdiction includes "supplemental" jurisdiction over matters that do *not* affect the estate. *See id.* at 573 ("[W]e find that the district court correctly concluded that the bankruptcy court could not exercise supplemental jurisdiction . . . .").

federal courts, is grounded in, and limited by, statute." *Celotex*, 514 U.S. at 307. If Congress has not granted bankruptcy courts statutory jurisdiction over a particular matter, bankruptcy courts cannot create it by invoking "inherent equitable powers." And while the Bankruptcy Code grants bankruptcy courts the power to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title," 11 U.S.C. § 105(a), that provision is not an independent source of jurisdiction. *See In re Combustion Eng'g, Inc.*, 391 F.3d 190, 225 (3d Cir. 2004); *In re Johns-Manville Corp.*, 801 F.2d 60, 63 (2d Cir. 1986); *Celotex*, 514 U.S. at 327 (Stevens, J., dissenting).[9]

Because the Ninth Circuit's express conclusion that the bankruptcy court could exercise supplemental jurisdiction was thus the only possible basis for its holding, the split of authority among the courts of appeals on that question is plainly implicated by this case.

* * *

In short, the question whether bankruptcy courts can exercise supplemental jurisdiction is squarely presented here. The conflict among the circuits on that important question regarding the scope of bankruptcy jurisdiction is clear and undisputed and will not disappear absent intervention by this Court. And, because this case presents the supplemental jurisdiction question in the context of a recurring procedural dilemma for bankruptcy courts that is of substantial importance to individual debtors, *see* Br. of Nat'l Assoc. of Consumer Bankr. Attys at 2, it is a particularly appropriate vehicle for resolution of that question.

CONCLUSION

The petition for a writ of certiorari should be granted.

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[9] Respondent's contention that the bankruptcy court has the "inherent authority" to enforce its own judgments (Br. in Opp. 9-10), is inapposite. The bankruptcy court's authority to *enforce* judgments it has validly entered is not at issue; the question is whether the bankruptcy court had jurisdiction to enter the judgment against petitioner in the first instance.

Respectfully submitted,

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IN THE

Supreme Court of the United States

ROBERT SASSON,

Petitioner,

v.

NORMAN F. SOKOLOFF, M.D., individually and as Trustee for CAMELOT MEDICAL GROUP, INC., PROFIT SHARING PLAN,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF OF AMICUS CURIAE G. ERIC BRUNSTAD, JR., IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The bankruptcy jurisdiction statute, 28 U.S.C. § 1334(b), grants district courts jurisdiction over "civil proceedings arising under title 11, or arising in or related to cases under title 11." In turn, 28 U.S.C. § 157(a) provides that district courts may refer such proceedings to "the bankruptcy judges for the district."

The general federal supplemental jurisdiction statute, 28 U.S.C. § 1367(a), grants district courts jurisdiction "in any civil action of which the district courts have original jurisdiction," over "claims that are so related to claims in the action . . . that they form part of the same case or controversy under Article III of the United States Constitution."

The question presented, which has divided the courts of appeals, is whether bankruptcy courts may exercise the general supplemental jurisdiction provided in section 1367(a) to hear claims that fall outside section 1334(b)'s more restrictive grant of jurisdiction over matters "related to" the bankruptcy case.

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INTEREST OF THE AMICUS CURIAE

Amicus curiae G. Eric Brunstad, Jr. respectfully submits this brief in support of Petitioner's request for issuance of a writ of certiorari. Pursuant to Rule 37.3(a), all parties have consented to the filing of this brief.[1]

The undersigned *amicus* is the Macklin Fleming Visiting Lecturer of Law at the Yale Law School, where he teaches courses on bankruptcy law, domestic and international business reorganizations, secured transactions, commercial transactions, and argument and reason. He has taught at Yale since 1992, and has also taught at the Harvard Law School.

In addition to teaching, the undersigned is the current Chair of the ABA Business Bankruptcy Committee. He is also a partner with the law firm of Bingham McCutchen LLP, practicing in the areas of bankruptcy law and appeals. He is a contributing author to the Collier treatise on bankruptcy and is responsible for writing and editing multiple chapters of the treatise. He has argued matters of bankruptcy law before the Court, most recently in *Marshall v. Marshall*, no. 04-1544 (2006) (counsel of record for respondent), and *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004) (counsel of record for respondent), and has participated in numerous other bankruptcy cases before the Court, including *Howard Delivery Serv. Inc. v. Zurich American Ins. Co.*, no. 05-128 (2006) (counsel of record for *amici curiae*), *Central Virginia Community College v. Katz*, 126 S. Ct. 990 (2006) (co-counsel for respondent), *Rousey v. Jacoway*, 544 U.S. 320 (2004) (co-counsel for petitioners), *Tennessee Student Assistance Corp. v. Hood*, 541 U.S. 440

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[1] Pursuant to Supreme Court Rule 37.6, *amicus curiae* states that no counsel for any party to this dispute authored this brief in whole or in part and no person or entity, other than *amicus curiae*, made a monetary contribution to the preparation or submission of this brief. Both parties have filed letters with the Court consenting to the filing of this brief.

(2004) (counsel of record for *amicus curiae*), *Kontrick v. Ryan*, 540 U.S. 443 (2004) (co-counsel for respondent), *Lamie v. United States Trustee*, 540 U.S. 526 (2004) (co-counsel for petitioner), *FCC v. NextWave Personal Communications Inc.*, no. 01-653 (2002) (co-counsel for respondent), *Archer v. Warner*, no. 01-1418 (2002) (counsel of record for *amicus curiae*), *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1 (2000) (counsel of record for petitioner), and *Connecticut Nat'l Bank v. Germain*, 503 U.S. 249 (1992) (associate counsel for petitioner).

The undersigned is interested in the administration of bankruptcy law, particularly matters relating to the administration and jurisdiction of the bankruptcy courts. He has studied and published articles on a variety of bankruptcy topics, including the history and evolution of bankruptcy law. The basic perspective of the undersigned is that, in order to preserve the constitutionality of the bankruptcy jurisdictional statutes, careful attention must be given to the limitations upon bankruptcy court jurisdiction enacted by Congress. Consistent with Supreme Court Rule 37.1, the purpose of this brief is to bring to the Court's attention matters that other parties do not intend to address, particularly relating to the constitutional implications of allowing bankruptcy courts to exercise supplemental jurisdiction, pursuant to 28 U.S.C. § 1367, over claims which bankruptcy courts would not otherwise have jurisdiction.

RELEVANT STATUTORY PROVISIONS

Section 1334(b) of title 28, United States Code provides: "Except as provided in subsection (e)(2), and notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to a case under title 11."

Section 157(a) of title 28, United States Code provides, in relevant part: "Each district court may provide that any or all cases under title 11 and any or all proceedings arising under title

11 or arising in or related to a case under title 11 shall be referred to the bankruptcy judges for the district."

Section 157(b) of title 28, United States Code provides, in relevant part: "Bankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, . . . and may enter appropriate orders and judgments, subject to review under section 158 of this title."

Section 157(c) of title 28, United States Code provides, in relevant part: "A bankruptcy judge may hear a proceeding that is not a core proceeding but that is otherwise related to a case under title 11. In such a proceeding, the bankruptcy judge shall submit proposed findings of fact and conclusions of law to the district court, and any final order or judgment shall be entered by the district judge after considering the bankruptcy judge's proposed findings and conclusions and after reviewing de novo those matters to which any party has timely and specifically objected."

Section 1367(a) of title 28, United States Code provides: "Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to the claims in the action within such original jurisdiction that they form a part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties."

Section 523(a)(6) of title 11, United States Code provides, in relevant part: "A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt . . . . (6) for willful and malicious injury by the debtor to another entity or to the property of another entity."

STATEMENT

In 1988, Respondent Norman Sokoloff, individually and as trustee of the Camelot Medical Group (collectively, "Sokoloff"), obtained a $120,000 state court judgment against Petitioner

Robert Sasson ("Sasson") on a breach of contract claim. Pet. App. 22a. Sasson obtained a stay of that judgment (the "State Court Stay"), based on his agreement not to dissipate his assets. *Id.* Sasson violated the State Court Stay and satisfied the claims of creditors other than Sokoloff. *Id.* The state court then dissolved the State Court Stay and entered judgment against Sasson for $149,489.53 plus interest (the "State Court Judgment"). Pet. App. 23a. Sokoloff recorded an abstract of the State Court Judgment in April 1989, but failed to renew it and it eventually lapsed. *Id.*

In May 1989, Sasson filed a petition for relief under chapter 7 of the Bankruptcy Code. Pet. App. 23a. In the chapter 7 case, Sokoloff sought a determination that the judgment *debt* arising from the State Court Judgment was nondischargeable under 11 U.S.C. § 523(a)(6). Pet. App. 23a. Whereas the State Court Judgment arose from a breach of contract claim that was an "indisputably *dischargeable* debt," Sokoloff's complaint in the adversary proceeding alleged a separate and distinct claim against Sasson. Pet. App. 28a n.17. Sokoloff alleged that Sasson's conduct in violating the State Court Stay "constituted a willful and malicious injury" within the scope of section 523(a)(6) of the Code, giving rise to a nondischargeable debt. Sokoloff asked the bankruptcy court to enter a *new* money judgment, holding Sasson liable for willful and malicious conduct in violating the State Court Stay. Pet. App. 24a.

The bankruptcy court ruled in favor of Sokoloff. Pet. App. 24a. Rather than just determining "the *dischargeability* of [the alleged] debt," Fed. R. Bankr. P. 7001(6) (emphasis supplied); *see* 11 U.S.C. § 523(a)(6), the bankruptcy court entered a final money judgment on the merits of this new claim (the "Bankruptcy Court Judgment"), *see* Pet. App. 24a.

Sasson then sought to vacate the Bankruptcy Court Judgment, arguing that the bankruptcy court lacked subject matter jurisdiction to enter a final money judgment against him on the nondischargeable claim alleged by Sokoloff. The bankruptcy court and the United States Bankruptcy Appellate Panel of the Ninth Circuit disagreed, concluding that the

bankruptcy court had jurisdiction to "make an independent determination" on the merits of Sokoloff's alleged underlying claim that Sasson's "prepetition, postjudgment, manipulative conduct" violated the State Court Stay because that conduct was willful and malicious and therefore "arises under" section 523(a)(6) of the Bankruptcy Code. Pet. App. 29a-30a.

The Ninth Circuit affirmed, but instead of holding that Sokoloff's claim "arises under" the Bankruptcy Code, held that Sokoloff's claim was within the bankruptcy court's "related to" jurisdiction. Pet. App. 6a. In so doing, the Ninth Circuit stated that "[a] bankruptcy court's 'related to' jurisdiction is very broad, 'including nearly every matter directly or indirectly related to the bankruptcy.'" *Id.* The court reasoned that bankruptcy courts may adjudicate claims *not* within the traditional definition of a bankruptcy court's "related to" jurisdiction because bankruptcy "jurisdiction also includes the district court's supplemental jurisdiction, pursuant to 28 U.S.C. § 1367, over all other claims that are so related to claims in the action within [the court's] original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution." Pet. App. 6a (internal quotation marks omitted). The Ninth Circuit thus held that the bankruptcy court had "supplemental" jurisdiction to adjudicate and enter a final judgment on Sokoloff's claim. Pet. App. 1a-2a.

REASONS FOR GRANTING THE WRIT

Sasson correctly notes that the courts of appeals are intractably divided on the question whether bankruptcy courts have supplemental jurisdiction under 28 U.S.C. § 1367 to adjudicate claims that are not within the "related to" jurisdiction granted by Congress under the bankruptcy jurisdictional statutes. The Court's intervention is warranted, not only to resolve the split among the courts of appeals, but also because the decision below, in condoning the exercise of jurisdiction by bankruptcy courts that exceeds the jurisdiction granted to them by Congress under 28 U.S.C. §§ 1334 and 157, directly contravenes the constitutional principles espoused by this Court in *Northern*

Pipeline Constr. Co. v. Marathon Pipe Line Co., 458 U.S. 50 (1982) (plurality), and adopted by Congress shortly thereafter in enacting sections 1334 and 157. Indeed, in affirming the bankruptcy court's entry of a final money judgment on a claim that is neither a "core" claim that arises under the Bankruptcy Code or arises in a case under the Code, nor "related to" Sasson's bankruptcy case or estate, the decision below completely unwinds the measures enacted by Congress in response to *Marathon*.

Moreover, the decision below renders superfluous the "related to" jurisdiction provided in sections 1334 and 157 -- which authorize bankruptcy courts to hear *only* those claims that have "some effect" on the bankruptcy estate -- because the supplemental jurisdiction provided in 28 U.S.C § 1367 and relied upon by the Ninth Circuit in the decision below is much broader than the grant of "related to" jurisdiction provided in section 1334(b). The decision below also permits the general supplemental jurisdiction statute, 28 U.S.C § 1367, to control the meaning of the specific bankruptcy jurisdiction statute, 28 U.S.C. § 1334, in violation of this Court's well-established maxims of statutory construction. For these reasons, the Court should grant certiorari to resolve this important question concerning the fundamental scope of bankruptcy jurisdiction.

A. The Ninth Circuit's Interpretation Of The Bankruptcy Jurisdiction Statutes Creates, Rather Than Avoids, Serious Constitutional Questions.

This Court has long directed that courts must follow the canon of statutory construction that, where possible, statutes should be read in a manner that avoids clashes with the Constitution. *See, e.g., Clark v. Benitez*, 543 U.S. 371, 380-81 (2005) ("[W]hen deciding which of two plausible statutory constructions to adopt, a court must consider the necessary consequences of its choice. If one of them would raise a multitude of constitutional problems, the other should prevail . . . ."); *Legal Servs. Corp. v. Velazquez*, 531 U.S. 533, 545 (2001); *United States v. Security Indus. Bank*, 459 U.S. 70,

78 (1982); *Crowell* v. *Benson*, 285 U.S. 22, 62 (1932). This rule of construction "is a tool for choosing between competing plausible interpretations of statutory text, resting on the reasonable presumption that Congress did not intend the alternative which raises serious constitutional doubts. The canon is thus a means of giving effect to congressional intent, not of subverting it." *Clark*, 543 U.S. at 381. The decision below plainly violates this rule by interpreting the bankruptcy jurisdictional statutes in a manner that *creates* a constitutional conflict where none need exist, and completely undercuts Congress's revision of the bankruptcy jurisdiction statutes, 28 U.S.C. §§ 1334 and 157, after *Marathon*.

Both before and after *Marathon*, Congress gave district courts "original but not exclusive jurisdiction of all civil proceedings *arising under* title 11, or *arising in* or *related to* cases under title 11." 28 U.S.C. § 1334(b) (emphasis supplied). In turn, Congress has constituted the federal bankruptcy courts as "units" of the district courts, 28 U.S.C. § 151, and has set forth their jurisdiction in 28 U.S.C. § 157. Under section 157(a), "[e]ach district court may provide that any or all cases under title 11 and any or all proceedings *arising under* title 11 or *arising in* or *related to* a case under title 11 shall be referred to the bankruptcy judges for the district." 28 U.S.C. § 157(a) (emphasis supplied). Following *Marathon*, however, exercise of the district courts' bankruptcy jurisdiction by the bankruptcy courts is specifically circumscribed by further provisions of section 157 precisely because, unlike district judges, bankruptcy judges are not constitutionally authorized to exercise the full judicial power of the United States, as they are not judges appointed under Article III of the Constitution.

In *Marathon*, the debtor commenced its bankruptcy case and sought to have the bankruptcy court fully and finally adjudicate a state law cause of action for breach of contract and warranty between the debtor and defendant Marathon Pipe Line. Under the bankruptcy jurisdiction provisions that pre-dated *Marathon*, the bankruptcy court had express statutory authorization to adjudicate the suit because the outcome of the suit would affect

the debtor's bankruptcy estate since, if the debtor won the lawsuit, any recovery would increase its estate. *Marathon*, 458 U.S. at 53-54.

Observing that the bankruptcy courts were not constituted as Article III tribunals, the Court struck down the bankruptcy jurisdictional provisions that allowed the bankruptcy court to enter a final judgment on such claims, because they permitted a non-Article III court to exercise plenary jurisdiction over, and finally resolve, a garden variety, state law breach of contract action. 458 U.S. at 71. The Court concluded that federal court resolution of such claims is properly reserved for Article III tribunals exercising the full judicial power of the United States -- i.e., the federal district courts. *Id.* at 87.

In reaching its conclusion, the Court distinguished between strict "bankruptcy" matters, such as causes of action unique to the bankruptcy process, and matters traditionally adjudicated in other courts, such as breach of contract actions and tort claims. *Marathon*, 458 U.S. at 84. The Court explained that matters of "public right," such as rights and actions created peculiarly as a matter of federal bankruptcy law, might be assigned for resolution by a non-Article III judicial officer. *Id.* at 83-84. In contrast, matters of "private right," including causes of action created and defined under state law, must be resolved in federal court only by an Article III judge. *Id.* Based on this analysis, the Court found the pre-*Marathon* jurisdictional scheme to be unconstitutional because it vested bankruptcy judges with too much authority.

Rather than address the constitutional defects of the pre-*Marathon* jurisdictional statutes by making bankruptcy judges Article III judges, Congress instead chose to limit the bankruptcy courts' ability to finally determine claims and causes of action by creating two fundamental classes of proceedings in bankruptcy cases under section 157 -- "core" matters that arise under the Bankruptcy Code or arise in a case under the Code, and "noncore" matters that "relate to" a bankruptcy case.

Consistent with this Court's mandate in *Marathon*, section 157(b)(1) vests the bankruptcy courts with plenary jurisdiction

only with respect to "public right" bankruptcy issues; namely, "core proceedings" that either (a) "*arise under* title 11" or (b) "*arise in* a case under title 11." 28 U.S.C. § 157(b)(1) (emphasis supplied). Proceedings that "*arise under* title 11" or "*arise in* a case under title 11" either (a) depend for their existence on a substantive provision of the Code and do not exist independently of the Code or (b) are "'administrative matters' that arise only in bankruptcy cases," "are not based on any right expressly created by [the Code]," and "have no existence outside of the bankruptcy." *Eastport Assocs. v. City of Los Angeles (In re Eastport Assocs.)*, 935 F.2d 1071, 1076 (9th Cir. 1991). In such proceedings, bankruptcy courts may hear and determine the merits of a claim and enter a final judgment subject to ordinary appellate review under 28 U.S.C. § 158. *See* 28 U.S.C. § 157(b). By expressly limiting the scope of the bankruptcy courts' plenary jurisdiction, however, Congress acted purposefully to *exclude* from such jurisdiction all "private right" controversies, such as ordinary state law causes of action like the state law breach of contract action at issue in *Marathon*.

"Noncore proceedings," or "private right" cases, are proceedings that are, at best, merely "related to a case under title 11." 28 U.S.C. § 157(c). Under the most widely accepted standard, a claim is "related to a case under title 11" if "the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy." *Pacor, Inc. v. Higgins*, 743 F.2d 984 (3d Cir. 1984); *see Celotex Corp. v. Edwards*, 514 U.S. 300, 308 n.6 (1995) (noting that nine courts of appeals had at that time adopted the *Pacor* test). In noncore proceedings, a bankruptcy court may not enter a final judgment but instead submits proposed findings of fact and conclusions of law to the district court, which must conduct a *de novo* review. 28 U.S.C. § 157(c). Indeed, "[a]ny final order or judgment" in a noncore proceeding "shall be entered by the district [court]," and not the bankruptcy court. *Id.*

The distinction between core matters that arise under the Bankruptcy Code or arise in a case under the Code, and noncore matters that merely relate to a case, was the key factor in

Congress's scheme to remedy the constitutional infirmities identified by the Court in *Marathon*. *Cf. Celotex*, 514 U.S. at 322 ("In my view the distinction between the jurisdiction to 'hear and determine' core proceedings on the one hand and the jurisdiction only to 'hear' noncore proceedings on the other hand is critical.") (Stevens, J. dissenting). The distinction is what prevents bankruptcy courts from entering final judgments on state law claims that are merely "related to" the bankruptcy estate.

The decision below treats as irrelevant the plain fact that the bankruptcy court entered a final money judgment on a garden-variety state law claim. Far from comporting with the jurisdictional limitations enacted by Congress in the wake of *Marathon*, the rule followed in the decision below ignores them:

> The bankruptcy court had jurisdiction to enter a money judgment in the adversary proceeding. We have long held that "the Bankruptcy Court has jurisdiction to enter a monetary judgment on a disputed state law claim *in the course of making a determination that a debt is nondischargeable*."

Pet. App. 4a (citations omitted) (emphasis supplied). In the Ninth Circuit's view, once the pure bankruptcy law question of whether a debt is nondischargeable is raised in an adversary proceeding, bankruptcy courts *gain* jurisdiction to enter final judgments on the underlying merits of the allegedly nondischargeable cause of action (and, apparently, any other claim related to the controversy), regardless of the fact that there is no underlying basis for bankruptcy jurisdiction over such claims. *See* Pet. App. 5a, 6a, 26a, 27a.[2]

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[2] Congress expressly provided creditors the right to have a debt declared nondischargeable, and creditors with such claims may pursue the adjudication and liquidation of such claim outside of the bankruptcy court and process. 11 U.S.C. § 523. To protect such claims, creditors must seek a determination of

The Ninth Circuit cited two statutes in support of its rule. The first is section 105(a) of the Bankruptcy Code. Pet. App. 5a. But section 105(a) does not and cannot confer independent jurisdiction upon a bankruptcy court where jurisdiction does not otherwise exist. *See Celotex v. Edwards*, 514 U.S. 300, 326-27 (1995) (Stevens and Ginsburg, J.J., dissenting) (stating the "[i]t cannot be the law, however, that a bankruptcy judge has jurisdiction to enter any conceivable order that a party might request simply because § 105(a) authorizes some injunctions or because the request was first made in a pending Title 11 case," and citing the leading bankruptcy treatise for the proposition that "Section 105 'is not an independent source of jurisdiction, but rather it grants the courts flexibility to issue orders which preserve and protect their jurisdiction'") (citations omitted); *In re Combustion Eng'g, Inc.*, 391 F.3d 190, 224-25 (3d Cir. 2005) ("[A]s the statute makes clear, § 105 does not provide an independent source of federal subject matter jurisdiction."); *In re Johns-Manville Corp.*, 801 F.2d 60, 63 (2d Cir. 1986) ("Section 105(a) . . . does not broaden the bankruptcy court's jurisdiction.").

The second statute relied upon by the Ninth Circuit is 28 U.S.C. § 1367, which confers "supplemental" jurisdiction upon federal district courts. Pet. App. 6a. The Ninth Circuit stated that "[a] bankruptcy court's 'related to' jurisdiction is very broad, 'including nearly every matter directly or indirectly related to the bankruptcy,'" and that "Congress [has] expanded the Bankruptcy Court's Article I jurisdiction by granting federal

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nondischargeability, or the claim will be discharged. Under the Ninth Circuit's rule, however, once a creditor seeks a simple declaration of nondischargeability, the bankruptcy court has jurisdiction to determine the underlying claim. The Ninth Circuit's rule amounts to a waiver of the creditor's fundamental right to choose when, where, and how to assert its underlying claim. This cannot be what Congress intended under the bankruptcy statutes, as enacted.

district courts with 'original and exclusive jurisdiction of all cases under title 11.'" Pet. App. 6a (citations omitted). Ignoring the principles enunciated in *Marathon* and blurring the distinctions among (a) the jurisdiction that Congress is empowered to grant, (b) the jurisdiction that Congress has, in fact, granted to Article III courts, and (c) the limited jurisdiction that Congress may grant to Article I courts, the court concluded:

> Thus, at present, the bankruptcy court's "related to" jurisdiction also includes the district court's supplemental jurisdiction pursuant to 28 U.S.C. § 1367 "over all claims that are so related to claims in the action within [the court's] original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution."

Pet. App. 6a.

Simply put, the rule followed by the Ninth Circuit in this case ignores the constitutional issues identified by the Court in *Marathon* and entirely eviscerates the prophylactic measures that Congress adopted in response to *Marathon*. *See Marathon*, 458 U.S. at 71 ("But the restructuring of debtor-creditor relations, which is at the core of the federal bankruptcy power, must be distinguished from the adjudication of state-created private rights, such as the right to recover contract damages that is at issue in this case."). That Congress has granted to *Article III district courts* the broad jurisdiction provided in 28 U.S.C. § 1367 does not change the fact that bankruptcy courts are *not* Article III courts; nor does it change the fact that the jurisdictional grant in bankruptcy cases is limited.

Here, instead of simply deciding that the underlying debt that Sokoloff alleged Sasson owed was *excepted from discharge*, the bankruptcy court adjudicated Sasson's *liability* and entered its findings as a final judgment for money damages.[3] In doing

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[3] Section 523 does *not* create a *right of recovery* but simply permits the bankruptcy court to make a *determination* as to

so, the bankruptcy court improperly entered a final judgment on a garden-variety state law claim without complying with the restrictions imposed by Congress with respect to noncore matters, which limit the bankruptcy court's decision-making authority to proposing findings of fact and conclusions of law. *See* 28 U.S.C. § 157(c). In affirming this result, the Ninth Circuit relied upon a rule of law that permits precisely what Congress precluded bankruptcy courts from doing when it enacted 28 U.S.C. §§ 157(b) & (c). In short, the Ninth Circuit's interpretation of 28 U.S.C. §§ 157, 1334 and 1367, and 11 U.S.C. § 105 expands the bankruptcy court's jurisdiction in direct conflict with the constitutional limitations identified by the Court in *Marathon*. This unconstitutional result should not be allowed to stand.

Numerous courts have reached the conclusion that bankruptcy courts are not automatically empowered to enter a judgment on the underlying claim when the pure bankruptcy law issue of nondischargeability has been raised. *See, e.g.*, *Walker v. Cadle Co. (In re Walker)*, 51 F.3d 562, 573 (5th Cir. 1995); *Miller v. Kemira (In re Lemco Gypsum, Inc.)*, 910 F.2d 784, 789 (11th Cir. 1990); *Wisconsin Dep't of Indus., Labor & Human Relations v. Marine Bank Monroe (In re Kubly)*, 818 F.2d 643,

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dischargeability. *Butler v. Clark (In re Clark)*, 202 B.R. 243, 257 n.38 (Bankr. W.D. Mich. 1996) ("The Court recognizes that no independent cause of action for defalcation exists under authority of § 523(a)(4), but that substantive non-bankruptcy law will determine whether defalcation has occurred."); *In re Verdon*, 95 B.R. 877, 881-82 (Bankr. N.D.N.Y. 1989) (noting that section 523 "creates a cause of action for nondischargeability, not damages"); *see also James v. McCoy*, 56 F. Supp. 2d 919, 935 (S.D. Ohio 1998) (discussing nondischargeability statutes and stating that "[t]hese statutes do not create a private right of action, but merely set forth the criteria that a bankruptcy court must follow in determining dischargeability of debts").

645 (7th Cir. 1987); *Bobroff v. Continental Bank (In re Bobroff)*, 766 F.2d 797, 802 (3d Cir. 1985). By adhering to the distinctions that Congress made in enacting section 157, and by holding that the district court's "supplemental jurisdiction" does not apply to the limited jurisdiction of the bankruptcy courts, these courts have properly avoided an interpretation of the bankruptcy jurisdictional statutes that runs afoul of the constitutional principles addressed in *Marathon*. The decision below is erroneous precisely because it creates a constitutional conflict where one need not exist. *See Legal Servs. Corp.*, 531 U.S. at 545 ("It is well understood that when there are two reasonable constructions for a statute, yet one raises a constitutional question, the court should prefer the interpretation which avoids the constitutional issue.").

B The Decision Below Erroneously Interprets The Specific Bankruptcy Jurisdiction Statutes As Controlled By The General Supplemental Jurisdiction Statute.

The decision below also violates the canon of statutory construction providing that the terms of a statute that specifically address the issue at hand will govern over a more general statute that arguably could be read as being broadly applicable. *See Guidry v. Sheet Metal Workers Nat'l Pension Fund*, 493 U.S. 365, 375 (1990) ("It is an elementary tenet of statutory construction that where there is no clear intention otherwise, a specific statute will not be controlled or nullified by a general one . . . .") (quoting *Morton v. Mancari*, 417 U.S. 535, 550-551 (1974)); *Radzanower v. Touche Ross & Co.*, 426 U.S. 148, 153 (1976) ("[W]here there is no *clear* intention otherwise, a specific statute will not be controlled or nullified by a general one, regardless of the priority of enactment."). As the Court has explained:

> The reason and philosophy of the rule is, that when the mind of the legislator has been turned to the details of a subject, and he has acted upon it, a subsequent statute in general terms, or treating the subject in a general

> manner, and not expressly contradicting the original act, shall not be considered as intended to affect the more particular or positive previous provisions, unless it is absolutely necessary to give the latter act such a construction, in order that its words shall have any meaning at all.

Radzanower, 426 U.S. at 153.

Title 28, section 1334 constitutes a specific and limited grant of jurisdiction to federal courts to hear and determine only certain types of matters when bankruptcy jurisdiction and the provisions of the Bankruptcy Code are involved. *See* 28 U.S.C. § 1334(b). The types of matters that federal courts are entitled to adjudicate under their *bankruptcy* jurisdiction, as compared with other fonts of federal jurisdiction, are specifically set forth in section 1334. *Id.* Within the context and confines of a bankruptcy case, Congress gave federal courts jurisdiction to adjudicate *only* claims: (a) "arising under title 11," (b) "arising in" a case under title 11, or (c) "related to" such a case. *Id.* Congress could have, but did not, give federal courts jurisdiction in bankruptcy cases to hear and determine "all claims," or claims that are other than "related to" the bankruptcy estate. Instead, Congress's grant of jurisdiction in bankruptcy matters is specific, limited, and tethered to either the provisions of the Bankruptcy Code or the *res* being administered in bankruptcy.

By contrast, 28 U.S.C. § 1367 applies "in any civil action of which the district courts have original jurisdiction." In that context, the district court acquires "supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution." *Id.* Thus, unlike 28 U.S.C. §§ 1334 and 157, which apply specifically to bankruptcy matters and circumscribe the jurisdiction of the Article I bankruptcy courts, 28 U.S.C. § 1367's grant of jurisdiction to the Article III district courts is not limited to a specific type of case or controversy, but applies more generally in "any civil action." The grant of jurisdiction under section 1367 has been described as being at the outer limit

of Article III jurisdiction. *See, e.g., New Rock Asset Partners, L.P. v. Preferred Entity Advancements, Inc.*, 101 F.3d 1492, 1509 (3d Cir. 1996) ("the language and history of § 1367 support its extension to the limits that Article III permits"); *In re Walker*, 51 F.3d at 571-71 (collecting cases).

In holding that the general grant of jurisdiction "at the outer limited of Article III" under 28 U.S.C. § 1367 supplants the more specific and limited grant of jurisdiction under 28 U.S.C. §§ 157 and 1334, the decision below plainly violates this Court's precedents and canons of statutory construction.

C. The Decision Below Renders The Bankruptcy Court's "Related To" Jurisdiction Superfluous.

Not only does the rule followed by the Ninth Circuit allow a statute couched in general terms to supplant a specific grant of jurisdiction, it also renders the specific grant of jurisdiction in 28 U.S.C. § 1334 superfluous, since it is subsumed within the broad terms of 28 U.S.C. § 1367. As this Court has explained, however, "[i]t is, of course, a basic canon of statutory construction that we will not interpret a congressional statute in such a manner as to effectively nullify an entire section." *Dodd v. United States*, 545 U.S. 353, 358 (2005) (citing *Duncan v. Walker*, 533 U.S. 167, 174 (2001)) ("a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant"); *see also Dole Food Co. v. Patrickson*, 538 U.S. 468, 476-77 (2003) (construing a statute in a manner that avoids making one provision redundant).

Although Congress intended the "related to" jurisdiction provided by section 1334(b) to be broad, it is not without limits. *See Celotex*, 514 U.S. at 308 (noting that "a bankruptcy court's 'related to' jurisdiction cannot be limitless"); *see also Pacor*, 743 F.2d at 994 ("The jurisdiction of the bankruptcy courts to hear cases related to bankruptcy is not without limit, however, and there is a statutory, and eventually constitutional, limitation to the power of a bankruptcy court."). Accordingly, courts generally interpret the phrase "related to" as giving bankruptcy

courts jurisdiction over only those claims that "could conceivably have any effect on the estate being administered in bankruptcy." *Celotex*, 514 U.S. at 308 n.6.

Supplemental jurisdiction under section 1367, by contrast, is exceedingly broad, giving federal district courts jurisdiction over any claim that is "so related to claims in the action within the [court's] original jurisdiction that they form the same case or controversy under Article III of the United States Constitution." As noted, some courts have opined that the supplemental jurisdiction granted to district courts is the outer limit of Article III jurisdiction. *See, e.g., New Rock Asset Partners, L.P.*, 101 F.3d at 1509 ("the language and history of § 1367 support its extension to the limits that Article III permits"); *In re Walker*, 51 F.3d at 571-71 (collecting cases).

In this case, the "original jurisdiction" required before the application of section 1367 could even be considered is, clearly, the bankruptcy jurisdiction provided by section 1334. Under the rule followed in the decision below, if a party to the bankruptcy case brings *any* claim -- between parties already in the bankruptcy case or not -- that shares a "common nucleus of operative fact" with *any* other claim that "arises under title 11," "arises in a title 11 case," or is even just "related to" the bankruptcy case, the bankruptcy court has plenary jurisdiction to enter a final judgment on that claim.

In allowing a bankruptcy court to utilize the district court's supplemental jurisdiction, the decision below completely eliminates the "related to" limitation contained in section 1334 and 157 and greatly expands the bankruptcy court's jurisdiction. For example, under the rule followed in the decision below, if a third party (and non-participant in the bankruptcy case) had agreed to indemnify a *creditor* for any amounts that the debtor owed, a bankruptcy court would have supplemental jurisdiction, both to bring that third-party before the court and to determine the creditor's state law indemnification claims against the third party on the merits, even though the resolution of such claims would have absolutely no effect on the estate because they have no bearing on the amount the creditor can recover from the

debtor. The same would be true in ordinary tort actions in which a creditor seeks contribution or an apportionment of liability involving a third party. As long as the third-party claims arise out of a common nucleus of operative fact as the claim between the creditor and debtor, the bankruptcy court would have supplemental jurisdiction over those claims.

The decision below wholly ignores the reality that permitting an Article I bankruptcy court to exercise an Article III district court's supplemental jurisdiction over state law claims that are not within the specific jurisdiction granted in section 1334 allows the general supplemental jurisdiction statute to nullify the jurisdictional limits provided in 28 U.S.C. §§ 1334 and 157, statutes that Congress specifically tailored to apply in bankruptcy cases. That result not only conflicts with this Court's well-established rules of construction, *see Guidry*, 493 U.S. at 375; *Morton*, 417 U.S. at 550-51, it also is completely unnecessary, *see Radzanower*, 426 U.S. at 153 (noting that a general statute should not nullify a specific one "unless it is absolutely necessary to give the [general] act such a construction, in order that its words shall have any meaning at all"). Section 1367 is not stripped of its effect if it is not applied in bankruptcy; it still applies in civil actions before Article III district courts outside of the bankruptcy context. *See* 28 U.S.C. § 1367. However, if it is applied in bankruptcy, as discussed above, the "related to" jurisdiction specifically provided for by Congress in section 1334(b) serves no purpose.

The foregoing makes plain that, if the decision below is permitted to stand, bankruptcy courts will not have to consider whether a claim "affects" the bankruptcy estate in order to determine whether they have jurisdiction. Instead, litigants would simply argue that their claim is supplemental to some other claim in the bankruptcy case, and thus within the bankruptcy court's jurisdiction. Such an interpretation flies in the face of this Court's long-standing canons of statutory construction and could not have been intended by Congress. Accordingly, the Court should grant certiorari to review the decision below.

CONCLUSION

For the foregoing reasons, the Court should grant certiorari.

Respectfully submitted,

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(2)

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IN THE

Supreme Court of the United States

ROBERT SASSON,
Petitioner,

v.

NORMAN F. SOKOLOFF, M.D., individually and as Trustee for CAMELOT MEDICAL GROUP, INC., PROFIT SHARING PLAN,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF THE NATIONAL ASSOCIATION OF CONSUMER BANKRUPTCY ATTORNEYS AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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STATEMENT OF INTEREST OF *AMICUS CURIAE*[1]

Incorporated in 1992, the National Association of Consumer Bankruptcy Attorneys ("NACBA") is a non-profit organization of more than 3,200 consumer bankruptcy attorneys nationwide. Member attorneys and their law firms represent debtors in an estimated 300,000 bankruptcy cases filed each year. NACBA is the only national association of attorneys organized for the specific purpose of protecting the rights of consumer bankruptcy debtors.

NACBA's corporate purposes include education of the bankruptcy bar and the community at large on the uses and misuses of the consumer bankruptcy process. Additionally, NACBA advocates nationally on issues that cannot adequately be addressed by individual member attorneys. NACBA has filed *amicus curiae* briefs in various appellate courts seeking to protect the rights of consumer bankruptcy debtors, including briefs filed in this Court. *E.g., Kontrick v. Ryan*, 124 S.Ct. 906 (2004).

The NACBA membership has a vital interest in the Court's decision whether to grant review of this matter. NACBA members primarily represent individual low- and moderate-income wage-earners. These debtors and their families have a great need for the "breathing spell" from the burdens of their creditors as Congress intended. Litigating creditor motions to determine whether a debt may be discharged in bankruptcy may be a necessary part of a bankruptcy case because such motions help to define the nature and extent of claims against a debtor's estate. But it does not necessarily follow that

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[1] All parties to this case have consented to the filing of this brief, and letters indicating consent were submitted to the Court prior to the filing of this brief. No counsel for any party authored this brief in whole or in part, and no person or entity other than *amicus curiae*, their counsel, or their members made a monetary contribution to the preparation of this brief.

the debtor must then be forced to also litigate in bankruptcy court the merits of a claim that is ultimately determined to be non-dischargeable. Debtors of limited means simply cannot handle the burdens of defending creditor lawsuits regarding debts that, by definition, are against a debtor's person and no longer affect the estate in bankruptcy. Unless this Court grants certiorari and resolves the split among the circuit courts on the question whether bankruptcy courts may lawfully exercise "supplemental jurisdiction" to enter judgments on non-dischargeable debts, NACBA's constituency faces differing treatment in bankruptcy regarding those debts based solely upon where their petition is filed.

Additionally, NACBA is gravely concerned that holding such claims to fall within the "supplemental jurisdiction" of the bankruptcy courts would turn the very purpose of bankruptcy on its head. Forcing a debtor of limited means to litigate the merits of a non-dischargeable debt during the course of a bankruptcy proceeding undermines the debtor protections provided in bankruptcy. Bankruptcy instead becomes a debt-collection device for the benefit of creditors, whose leverage in obtaining a settlement or judgment against a debtor is increased by the debtor's inability, for lack of financial resources, to adequately litigate the merits of a debt bearing no significance on the administration of his estate. Moreover, forcing a debtor to engage in collateral litigation regarding non-dischargeable debts turns the debtor's (and the bankruptcy court's) focus away from the only real purpose of bankruptcy – the orderly administration of the estate and repayment of estate assets to creditors of the estate.

REASONS FOR GRANTING THE PETITION

I. THE COURTS OF APPEAL HAVE DIVIDED ON WHETHER BANKRUPTCY COURTS MAY GO BEYOND THEIR STATUTORILY LIMITED JURISDICTION TO EXERCISE "SUPPLEMENTAL JURISDICTION" UNDER SECTION 1367 OVER MATTERS THAT DO NOT AFFECT THE ESTATE.

The courts of appeal have split on the question whether bankruptcy courts may exercise supplemental jurisdiction under 28 U.S.C. § 1367 over claims which are "related" to claims in bankruptcy because they arise under a common nucleus of operative facts as claims in a bankruptcy case, but which do not otherwise fall within the specific grant of "related to" jurisdiction to bankruptcy courts as set forth in 28 U.S.C. § 1334(b).

Here, the issue presents itself in the context of a bankruptcy court's determination whether a preexisting debt may be excluded from discharge in bankruptcy pursuant to 11 U.S.C. § 523(a).[2] There is no question that dischargeability determinations fall within Congress' specific grant of jurisdiction to the bankruptcy courts, because that issue "arise[s] under" a specific provision of the Bankruptcy Code. *See* 28 U.S.C. § 1334(b). That a bankruptcy court would have jurisdiction to determine whether or not a debt may be discharged makes perfect sense – the

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[2] The Bankruptcy Code provides that creditors may seek a declaration from a bankruptcy court that certain types of claims are excluded from discharge in bankruptcy and thus the creditor may continue to sue the debtor to recover the debt after the bankruptcy. Debts which may be determined to be non-dischargeable include, *inter alia*, (i) debts obtained by fraud, false pretenses, or a false representation (11 U.S.C. § 523(a)(2)), (ii) debts for fraud or defalcation while acting in a fiduciary capacity (11 U.S.C. § 523(a)(4)), and (iii) debts for willful or malicious injury to another entity or the property of another entity (11 U.S.C. § 523(a)(6)).

bankruptcy court, after all, is charged with jurisdiction over a debtor's estate and claims against the estate. *See Tennessee Student Assistance Corp. v. Hood*, 541 U.S. 440, 447 (2004) (bankruptcy court jurisdiction "is premised on the debtor and his estate"). The bankruptcy court therefore must have jurisdiction to decide whether a claim is, in fact, a claim against the estate that falls within the court's jurisdiction.

Once a bankruptcy court decides that a claim is non-dischargeable, however, the debt becomes personal to the debtor and has no bearing whatsoever on the res of the estate. Such a debt is specifically contemplated to be paid from post-bankruptcy assets. *See, e.g., Berger, Shapiro, & Davis, P.A. v. Haeling (In re Foos)*, 183 B.R. 149, 162 (Bankr. N.D. Ill. 1995) (once a creditor successfully obtains a declaration that a debt is non-dischargeable, the debtor "would bear the burden of satisfying that debt out of post-bankruptcy assets . . . [which are] not property of the estate"); *In re Boggan*, 125 B.R. 533, 534 (Bankr. N.D. Ill. 1991) ("The holder of a non-dischargeable claim has remedies against the debtor personally and the debtor's post-bankruptcy assets that other creditors do not have"). Indeed, this is precisely the reason creditors seek non-dischargeability determinations: in addition to obtaining a pro-rata distribution on the debt from debtor's estate, a creditor can seek full recovery of the debt from a post-bankruptcy debtor whose debts have otherwise been discharged.

Because a non-dischargeable debt does not impact the estate, the bankruptcy court's jurisdiction over the claim – typically a claim arising under state law based on tort or contractual theories – should end. *Cf. Hood*, 541 U.S. at 450 ("the bankruptcy court's jurisdiction is premised on the res, not on the persona"). However, creditors seeking a declaration regarding the dischargeability of a debt also commonly

seek judgments from the bankruptcy courts on the merits of the underlying claims. *See* Alan M. Ahart, *Enforcing Nondischargeable Money Judgments: The Bankruptcy Courts' Dubious Jurisdiction*, 74 AM. BANKR. L.J. 115, 116 (2000) ("Most" nondischargeability determinations "not only ask the court to except particular debt(s) from discharge, but also to enter a money judgment against the debtor for the amount of the debts").

The jurisdiction specifically conferred upon bankruptcy courts is limited to "civil proceedings arising under Title 11, or arising in or related to cases under Title 11" that could potentially impact the res of a debtor's estate. 28 U.S.C. § 1334; *Celotex Corp. v. Edwards*, 514 U.S. 300, 308 (1995) (Congress "intended to grant comprehensive jurisdiction to the bankruptcy courts so that they might deal efficiently and expeditiously with *all matters connected to the bankruptcy estate*) (citation omitted) (emphasis added)). Because non-priority, non-dischargeable debts cannot, by definition, impact the res of a bankruptcy estate, bankruptcy courts lack subject matter jurisdiction over disputes regarding the claims underlying such debts. *See id.* at 307 ("the Bankruptcy Court's jurisdiction [over a proceeding] must be based on the 'arising under,' 'arising in,' or 'related to' language of §§ 1334(b) and 157(a)").

Notwithstanding the Court's statements in *Celotex* regarding the proper bases of bankruptcy court jurisdiction, the circuits have split on the question whether bankruptcy courts may go *beyond* their specific grant of jurisdiction in 28 U.S.C. § 1334 to also exercise "supplemental jurisdiction" under 28 U.S.C. § 1367 over claims which the court would otherwise lack jurisdiction concerning because they do not impact the res of the bankruptcy estate.

The Third, Fifth, Seventh, and Eleventh Circuits prohibit bankruptcy courts from exercising supplemental jurisdiction over claims which do not impact the res – that is, claims which do not affect payments to other creditors from the bankruptcy estate or the administration of the estate – even if the interests of "judicial economy" arguably may be served if the court hears the dispute. As aptly explained by the Eleventh Circuit: "Overlap between the bankrupt's affairs and another dispute is insufficient [to warrant bankruptcy court's exercise of jurisdiction] unless its resolution also affects the bankrupt's estate or the allocation of assets among creditors. The mere fact that there may be common issues of fact between a civil proceeding and a controversy involving the bankruptcy estate does not bring the matter within the scope of § 1334(b). Judicial economy itself does not justify federal jurisdiction." *Miller v. Kemira (In re Lemco Gypsum, Inc.)*, 910 F.2d 784, 789 (11th Cir. 1990) (footnotes omitted).[3] These decisions reflect an understanding of the specialized jurisdiction extended to bankruptcy courts. Section 1367 of Title 28 is, of course, readily applied to extend the jurisdiction of the district courts while such courts sit under heads of

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[3] *See also Bobroff v. Continental Bank (In re Bobroff)*, 766 F.2d 797, 302 (3d Cir. 1985) ("The mere fact that there may be common issues of fact between a civil proceeding and a controversy involving the bankruptcy estate does not bring the matter within the scope of [present section 1334(b)]") (quotation omitted); *Walker v. Cadle Co. (In re Walker)*, 51 F.3d 562, 573 (5th Cir. 1995) (bankruptcy court's exercise of "ancillary and pendent jurisdiction could subsume the more restrictive 'related to' and 'arising in' jurisdiction, such that the latter would be rendered substantially, if not entirely, superfluous"); *Wisconsin Dep't of Industry, Labor, and Human Relations v. Marine Bank Monroe (In re Kubly)*, 818 F.2d 643, 645 (7th Cir. 1987) (it is not sufficient for there to be a "logical relationship or 'nexus' between a proceeding and a bankruptcy case" because "the 'related to' jurisdiction encompasses only disputes that affect the payments to the bankrupt's other creditors or the administration of the bankrupt's estate").

jurisdiction that provide a broad general jurisdiction over "civil actions" of the type referenced in § 1367. (28 U.S.C. § 1367.) It is far less clear that section 1367 can appropriately be applied to extend the specialized jurisdiction of the district courts, and especially the bankruptcy courts, to administer cases and *in rem* "civil proceedings" (28 U.S.C. § 1334(b)) in bankruptcy.

The Second, Fourth, Sixth, Eighth, and Ninth Circuits, on the other hand, have permitted bankruptcy courts to go beyond the specific grant of jurisdiction under section 1334(b) to hear disputes over non-dischargeable state law claims based upon an alleged factual nexus between a bankruptcy proceeding and the underlying state law claim. That is, those circuits permit bankruptcy courts to exercise supplemental jurisdiction under section 1367, over claims which do not impact or affect a debtor's estate in any way.[4] In doing so, these courts have relied upon asserted interests of judicial economy and the bankruptcy courts' "equitable jurisdiction," and not on any finding that the debt could have any effect on the bankruptcy estate. *See, e.g., Cowen v. Kennedy (In re Kennedy)*, 108 F.3d 1015, 1016 (9th Cir. 1997) ("If it is acknowledged as beyond question that a complaint to

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[4] *See also Hall v. Davenport*, 1996 WL 34674, 76 F.3d 372 (4th Cir. 1996) (unpublished) (bankruptcy court has authority to enter money judgment on non-dischargeable debt because "to be non-dischargeable, the court must have found a debt to be due and owing"); *Longo v. McLaren (In re McLaren)*, 3 F.3d 958, 966 (6th Cir. 1993) (amount of liability on non-dischargeable debt was "properly determined" by the bankruptcy court because "if it is acknowledged . . . that a complaint to determine dischargeability of a debt is exclusively within the equitable jurisdiction of the bankruptcy court, then it must follow that the bankruptcy court may also render a money judgment" (internal citations and quotations omitted)); *Abramowitz v. Palmer*, 999 F.2d 1274, 1279 (8th Cir. 1993) ("[t]he small step the bankruptcy court took between determining [debtor's] liability for fraud and entering a money judgment against [debtor] as a result of that fraud was a logical exercise of related to jurisdiction").

determine dischargeability of a debt is exclusively within the equitable jurisdiction of the bankruptcy court, then it must also follow that the bankruptcy court may also render a money judgment . . . because equitable jurisdiction attaches to the entire cause of action . . .").

Whether a bankruptcy court may exercise supplemental jurisdiction over a state-law dispute absent "related to" jurisdiction under section 1334, in order to enter judgment against a debtor following a determination that the claim is non-dischargeable, is thus currently dependent only upon the location of the court in which a debtor files his or her bankruptcy petition. The split among the circuits on this issue engenders conflicting rulings among the lower federal courts and prevents the creation of a uniform body of law upon which debtors can rely. This is an important consideration given Congress' authority to establish "uniform laws on the subject of bankruptcies throughout the United States." U.S. Const. art. I, § 8, cl. 4. This Court should grant Petitioner's writ to resolve this issue.

II. REQUIRING A DEBTOR TO DEFEND AGAINST LITIGATION UNRELATED TO THE BANKRUPTCY ESTATE DURING THE COURSE OF A BANKRUPTCY CASE DEFEATS THE FUNDAMENTAL PURPOSES OF THE BANKRUPTCY CODE

A bankruptcy court's dischargeability determination is a "question of federal law independent of the issue of the validity of the underlying claim." *Grogan v. Garner*, 498 U.S. 279, 289 (1991). *See also Sill v. Sweeney (In re Sweeney)*, 276 B.R. 186, 195 (6th Cir. B.A.P. 2002) (Dischargeability is "a matter separate from the merits of the debt itself"). "A dischargeability action under [Section 523] encompasses 'two distinct claims: (1)

whether the debtor owes a debt to the plaintiff and (2) whether the debt owed by the debtor to the plaintiff is nondischargeable.'" *Sweeney*, 276 B.R. at 195 (quoting *Jorge v. Mannie (In re Mannie)*, 258 B.R. 440, 444-45 (Bankr. N.D. Cal. 2001).) The bankruptcy court's inquiry thus consists exclusively of a summary examination of the *nature* of the debt sought to be exempted from discharge, and need not delve into the merits of the underlying state-law claim.

Forcing a debtor to engage in litigation during the course of his or her bankruptcy regarding a non-priority, non-dischargeable claim that, by definition, cannot impact the estate eliminates the very protections that filing a bankruptcy petition is meant to provide. Yet, this is precisely the outcome that results from a bankruptcy court's exercise of "supplemental jurisdiction" over claims for which it otherwise lacks jurisdiction under section 1334. In particular, requiring debtors to defend, in bankruptcy court, litigation over an underlying state-law claim that cannot be discharged in bankruptcy works a significant hardship on debtors who, because of their limited resources, seek bankruptcy protection as a means of relief from creditor collection efforts and general financial pressures. The bankruptcy court is transformed from a sanctuary for debtors in dire financial straits into a means by which creditors can obtain expedited judgments against debtors who lack adequate resources to sufficiently defend against the claims. Such a result surely was not intended by Congress when it enacted the Bankruptcy Code.

Congress' intent to shield debtors from collection efforts and general financial pressures during the course of a bankruptcy case is illustrated by its enactment of the automatic stay provision set forth in 11 U.S.C. § 362, "[o]ne of the fundamental debtor protections provided by the bankruptcy laws." S.Rep. No. 95-989, 95th Cong., 2d Sess. 54-55 (1978),

reprinted in 1978 U.S.C.C.A.N. 5787, 5840-41. The automatic stay evinces Congress' view that a debtor requires "a breathing spell from its creditors. It stops all collection efforts, all harassment, and all foreclosure actions. It permits the debtor to attempt a repayment or reorganization plan, or simply to be relieved of the financial pressures that drove him into bankruptcy." *Id.* *See also In re Zinchiak*, 406 F.3d 214, 219 n.2 (3d Cir. 2005) ("'The automatic stay serves several purposes, including 'providing debtor a breathing spell from creditors by stopping all collection efforts . . .' as well as protecting 'creditors by preventing particular creditors from acting unilaterally to obtain payment from a debtor to the detriment of other creditors'") (quotation omitted); *Winters By and Through McMahon v. George Mason Bank*, 94 F.3d 130, 133 (4th Cir. 1996) ("The purpose of the automatic stay. . . is to shield the debtor from financial pressure during the pendency of the bankruptcy proceeding") (citing *In re Stringer*, 847 F.2d 549 (9th Cir. 1988)).

These important protections provided by the automatic stay no longer exist if a bankruptcy court may exercise "supplemental jurisdiction" under section 1367 and force a debtor to expend additional resources to litigate the merits of a claim underlying a non-dischargeable debt. Allowing creditors to litigate the merits of claims that are unrelated to the bankruptcy estate (and thus could be handled once the bankruptcy case has been closed) perpetuates increased litigation and collection efforts on the part of creditors during the pendency of a bankruptcy case, contrary to the "breathing spell" from collection efforts intended by the Bankruptcy Code. Typical consumer debtors simply lack the financial means to engage in protracted litigation – one reason for seeking bankruptcy protection in the first place. Low and moderate-income debtors have reason to be particularly concerned with such litigation, as they

may ultimately be coerced into settling claims they cannot afford to pay during the course of their bankruptcy case, on terms less favorable than the debtor might obtain once it has received a "fresh start" from the remainder of its debts.

Limiting a bankruptcy court's ability to enter judgments against a debtor based on non-dischargeable state law claims does not give debtor a "free pass" from the debt – rather, debtor must ultimately face the music post-bankruptcy, when the creditor seeks to obtain a judgment (or to enforce a pre-petition state court judgment) against debtor in a court of competent jurisdiction with respect to the state law claim, which (if entered) debtor must pay from post-bankruptcy assets. But such a scenario is preferable to one in which debtors drowning in debt and seeking, with bankruptcy court assistance, a means to satisfy creditors of the estate from their limited assets, must also concern themselves during the course of the bankruptcy case with collection efforts by creditors whose claims should not impact the bankruptcy.

The overall objective of the Bankruptcy Code – the "prompt and effectual administration of the estate of all bankrupts within a limited period" (*Katchen v. Landy*, 382 U.S. 323, 328-29 (1966)) – is likewise not served by permitting bankruptcy courts to exercise supplemental jurisdiction in this circumstance. Resolving state law claims underlying a non-dischargeable debt are irrelevant to the administration of a bankrupt's estate. Thus, scarce federal judicial resources are needlessly expended as bankruptcy judges address matters that Congress intended should be left to the state courts. Moreover, permitting litigation of such claims in bankruptcy court serves only to prolong the duration of a bankruptcy case, to the detriment of creditors who await recovery from the bankruptcy estate. Finally, debtors and the

bankruptcy court will suffer as their attention is turned from core matters attendant to case administration, such as marshaling assets and developing a plan for paying creditors of the estate, to dealing with matters that have no impact on the estate at all.

CONCLUSION

Certiorari is appropriate where, as here, a division among the courts of appeal regarding the extent of a bankruptcy court's jurisdiction has created a situation where certain debtors, by virtue of the circuit where they file a bankruptcy petition, may lose the primary benefit of seeking bankruptcy relief: a "breathing spell" from the debtor's creditors and relief from the financial pressures that drove the debtor into bankruptcy. The petition for writ of certiorari should be granted.

Respectfully submitted,

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